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JAMES T. BRADY.



THE  
BENCH AND BAR  
OF NEW-YORK.

CONTAINING

BIOGRAPHICAL SKETCHES OF EMINENT JUDGES, AND  
LAWYERS OF THE NEW-YORK BAR, INCIDENTS  
OF THE IMPORTANT TRIALS IN WHICH  
THEY WERE ENGAGED,

AND

ANECDOTES CONNECTED WITH THEIR PROFESSIONAL,  
POLITICAL AND JUDICIAL CAREER.

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BY  
L. B. PROCTOR,  
COUNSELOR AT LAW.

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DIOSSY & COMPANY.  
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HENRY M. TOBITT,  
*Printer and Stereotyper,*  
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TO  
THE JUNIOR BAR

OF THE  
STATE OF NEW-YORK,

*I Dedicate this Work.*

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WHILE one purpose of my toil in writing it was, to gather and record the fast scattering reminiscences of the men who have attained distinction at the Bar and on the Bench of our State, ere they should, as soon they would, be forever lost;—a labor undertaken in part for their own sakes, and from sacred regard to their memories;—it has also been an object, and by no means a minor one, to present their example to those already entered, or hereafter to enter, upon that profession which we love, and to accomplish eminence in which, calls for high qualities, physical, intellectual and moral.

It has been my hope that I might thus, in my day and generation, render a service to my own profession; hold aloft the standard; depict the struggles and vicissitudes through which our great advocates have been compelled to force their way; illustrate their studies, habits and powers; show the value of steady perseverance; encourage the timid, though oft beaten back, never to despair; and stimulate the industry, honor, and laudable ambition of those who take upon themselves the emblems of our order.

To you, therefore, young lawyers of New York, have I consecrated the time and labors necessary to collect and twine together the materials of this book; and trust the offering may bear fruit, many-fold, in your own achievements and renown.

THE AUTHOR.



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THE  
BENCH AND BAR  
OF NEW YORK.

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OGDEN HOFFMAN.

Styled the American Erskine.—A Son of Josiah Ogden Hoffman.—Enters the Navy as a Midshipman.—Enters the Service of the United States on board the President.—Captured with that Vessel in Attempting to Run the Blockade.—Thrilling Scene.—A Prisoner of War at Bermuda.—Dines with the British Officers.—Lieutenant Price Promptly Resents an Insult.—The Challenge.—Transferred to the Guerriere, Decatur's Flag Ship.—Accompanies Expedition to the Barbary States.—Conflict between the Guerriere and an Algerine Ship of War.—Commodore Decatur.—Hoffman Boards the Pirate Ship.—A Boarding Conflict.—The Victory.—Returns to New York.—Resigns his Commission.—The Law Student.—John Duer.—Hoffman Completes his Studies with him at Goshen, Orange County.—Commences Practice at Goshen.—Partner of Mr. Duer.—His Success as a Lawyer.—Incidents in his Practice.—Appointed District-Attorney.—Elected to the Assembly.—Removes to New York.—Hugh Maxwell.—Enters into Partnership with him.—Trial of Henry Eckford and Others.—Hoffman's Distinguished Position at the Bar of New York.—Appointed District-Attorney of New York.—His Political Career.—Moses H. Grinnell.—Dudley Selden.—Trial of Richard P. Robinson.—Description of the Murder.—Hoffman's Surpassing Eloquence.—Thrilling Scene.—The Verdict.—Its Effect.—Hoffman as a Criminal Lawyer.—His Advice to Mr. Evarts.—Elected to Congress.—His Congressional Career.—Grand Reception in New York.—His Speech.—Appointed United States District-Attorney.—Elected Attorney-General.—Description of his Oratory.—Personal Appearance.—His Death.—Proceedings of the New York City Bar.—Democratic General Committee.

OGDEN HOFFMAN has repeatedly been styled the American Erskine, and the appellation is not without propriety—in some circumstances the parallel is complete. Both of these great lawyers in their youth entered the navy; both attained the rank of passed midshipman, resigned that position, and entered the



legal profession, in which, by an intuitive acuteness, great erudition and matchless eloquence, they won the highest honors.

While Erskine overthrew constructive treason in England, and established there the doctrine that the jury are judges of the law and fact in cases of libel, Ogden Hoffman, by his fearless and disinterested defense of those whom clamor and prejudice had condemned, established at the American bar that heightened independence which places courts of justice beyond the reach of any influence. Mistakes as to facts and the operation of those passions which are inseparable from human frailty, may have led him to erroneous conclusions as to the real merits of cases which he espoused. Many of his speeches at the bar were distinguished for their bold and happy novelties of expression and felicities of phrase, accompanied by the most perfect simplicity of manner. The exuberance of his imagination constituted at once the charm and the defect of his oratory.

Ogden Hoffman was born in the city of New York, on the third day of May, 1793. His father was Josiah Ogden Hoffman, a distinguished civilian of that city, the associate, and often the opponent of Hamilton, Kent, Ambrose Spencer, Emmet, Wells, and other eminent jurists, whose profound learning and high order of eloquence, raised them to the sphere of the Pitts, the Burkes, the Sheridans and the Currans.

Ogden was the half-brother of Charles Fenno Hoffman, the eminent poet and novelist. On attaining his eighth year, he was placed in one of the best schools in the city. Here his progress was at first slow and tardy; but he soon began to gain rapidly in his studies.

It was said of Sir William Jones in his youth that he was a boy of so active a mind, that if he were left naked and friendless on Salisbury Plain, he would find his way to fame. This remark might well have applied to young Hoffman. He soon became

one of the best classical scholars in the institution, and also a superior mathematician—especially in the department of logarithms. His mind, naturally adventurous, early began to exhibit a preference for the life of a sailor; he read with pleasure the bold and brilliant exploits of naval heroes, and he determined to enter the naval service of his country.

His father intended to prepare him for the bar; but yielding to the strong desire of the boy for the navy, he procured him a midshipman's berth. With great diligence and unwearied application, he perfected himself in nautical science and naval discipline. When war with England was declared, he was in his seventeenth year. At this period, he entered the service of the United States, as a midshipman, on board the frigate *President*. He was with that vessel when she was captured by the British while attempting to run the blockade of New London. Through all the dangerous and exciting scenes which resulted in her capture, young Hoffman conducted himself with the coolness and intrepidity of a veteran. The *President* was taken to the Bermudas in charge of the British ship-of-war *Endymion*, where the American officers were detained as prisoners.

While at Bermuda, several British officers were one day invited to dine with the officers of the *President*. At the table there was an English lieutenant whose national pride had been inflated by the capture of the *President*, and whose insolence to the American officers had exhibited itself on several occasions. When toasts became the order at the table, after several courteous sentiments had been given by both British and American officers to each other, this lieutenant arose and proposed the following:

“The captain of the *Endymion*: by conquest, the captain of the *President*.”

Hardly had these words escaped his lips, when Lieutenant Edward Price, of the *President*, threw a glass of wine full in the face of the British officer,



exclaiming, "Resent that before you talk about the commander of the President." A challenge ensued, young Hoffman acting as the second of Price; but the hostile meeting was prevented by the authorities.

At the close of the war, Ogden was transferred from the President to the ship-of-war *Guerriere*, 44 guns. In 1815, she was Commodore Decatur's flag ship, attached to the American squadron destined to subjugate the Barbary States, whose persistent piracies and outrages upon our shipping brought upon them the vengeance of the Republic.

Ogden Hoffman accompanied this expedition, and the gallant Decatur soon conceived a strong and an almost parental affection for the young midshipman.

On the 16th of June, 1815, the *Guerriere*, being detached from the squadron off Cape Degatt, in Spain, fell in with the Algerine frigate *Mazouda*, 64 guns and 100 men, commanded by the notorious pirate, Rias Hammida, who had long been the terror of the Mediterranean. A terrible conflict took place, which resulted in the destruction of the *Mazouda*.

During a part of the engagement, Hoffman was placed in command of gun No. 6, next to a long 24-pounder. While engaged in serving his gun, the 24-pounder burst, spreading death and destruction on every side, and prostrating him senseless upon the deck. Fortunately, he was only stunned; and was on his feet in a moment. Before he could collect his scattered senses, a box of cartridges exploded, hurling him across the deck. Once more he escaped the death which others by his side suddenly met.

At this moment he was summoned to the side of Decatur. Begrimed and blackened with powder, his clothing torn, his cap blown away, he approached his commander, with the customary salute.

"Who are you, sir?" demanded Decatur.

"I am Hoffman, sir," was the reply.

"Hoffman! Very well, sir; you look as though

you had been shot from a gun. Take your position there," said the commander, pointing to the place he was to occupy during the remainder of the battle.

In a few moments more, almost every spar belonging to the pirate vessel was swept away by the shot of the Americans; but the *Guerriere* was now so badly crippled by the enemy, and the explosions which had taken place on her decks, that she was compelled to haul off for repairs. As the flag of the pirate was still defiantly flying, the boats of our vessel were made ready, with orders to board the enemy, and compel her to surrender. Hoffman, who was in command of the boats, promptly obeyed the order, and was soon on the decks of the *Mazouda*, followed by the crews of the other boats. A ghastly sight presented itself to their view. The body of Ham-mida, her commander, cut asunder by a solid shot, lay before them. On every side were the dead and dying; but enough of the enemy remained to make a fearful resistance, and one of those hand to hand conflicts which follow the signal to board, now took place; but the pirates were soon compelled to surrender; those who escaped death were transferred to the conqueror's ship, and the *Mazouda* was blown up.

The gallant conduct of Hoffman won the approbation of his commodore, who presented him with the cutlass and pistols of the Algerine commander.

He continued in the navy until the trouble with the Barbary States was settled, and peace declared; when, wearied with the monotony of the service, he resigned and returned to New York, and commenced the study of law in the office of his father.

The elder Hoffman was well aware that many legal principles are so artificial and refined, and that others are qualified by such distinctions and subtleties, that they cannot be readily understood by the student without much explanation; he therefore carefully superintended the education of his son, and en-

took every occasion to draw out his views upon questions of law, in conversation, and upon questions submitted by clients. In this way Ogden was practically conducted through elementary principles, precedents, and the philosophy of the law; thus he became a profound and thoroughly read lawyer.

His preparatory course being finished, he was called to the bar, and immediately became a partner of Mr. Duer, entering at once into the detail of an extensive practice.

In May, 1823, he was appointed District-Attorney of Orange County. The bar of that county consisted of the ablest lawyers in the State. This appointment, therefore, was highly complimentary to him as a lawyer. In the discharge of his official duties he was brought in collision with the most eminent advocates of the day. The office of district-attorney places a lawyer in a position where his hand is against every one, and every hand is against him—constituting him a sort of legal Ishmaelite.

During his term of office a large number of important criminal trials occurred, in some of which he was opposed by General Root and Elisha Williams. It was in conducting these trials that he acquired those unrivaled powers, that accurate and extensive learning, which afterwards rendered him one of the illustrious lawyers of the State.

On one of these occasions he followed General Root, who on the defense made one of those singularly powerful appeals to the jury for which, at that day, he was so distinguished. So exhaustive was his argument that it seemed he had left no room for Mr. Hoffman to found an argument or to establish the theory of the prosecution; and the curiosity of the bar was greatly excited in conjecturing the course he would pursue. The young advocate commenced; but a short time elapsed before he gained the earnest attention of the jury by the novelty of his combina-



tions, by the force of contrasts, by the striking manner in which apparently conflicting circumstances were harmoniously connected and blended in one strong chain of circumstantial evidence. He then seized the points and position of Root, and with the hand of a master dissected them with analytic skill. Then commenting upon the authorities cited by his great opponent, he entered, with fearless tread, regions of the most profound legal learning, displaying such mastery of the common law, such accuracy of reasoning, that when he closed, Mr. Root himself congratulated him upon his effort.

Hoffman had none of those mechanical arts of oratory which often conceal mediocrity of intellect.

In politics, he was a Democrat; and in the presidential contest which caused so much excitement throughout the country in 1823, he supported General Jackson; but such was his devotion to his profession that politics were a secondary matter with him. He was never what is called a politician. As a legislator in the State Assembly, as a law-maker in a Constitutional Convention, and as a representative in Congress, his eloquence and his various parliamentary abilities raised him to the sphere of a statesman.

From his earliest years he was surrounded by the most prominent lawyers and legislators. His father was, as has been already remarked, one of the leading lawyers and legislators of his time. He was to the American bar what Edmund Burke was to the English, and Moncreiff to the Scottish bar.

In the great case of the *People v. Goodwin*, tried in New York in 1821, his address to the jury equaled in power and judicial ability that of Mr. Curran's defense of Rowan in the Court of King's Bench.

He first entered the State legislature in 1791, and was continued in that body, with the exception of one or two years, until 1812—during a portion of which time his colleagues were the illustrious Kent, Brok-

holst, Livingston, De Witt Clinton, Aaron Burr, and others equally celebrated. In the legislature of 1794, with Ambrose Spencer, he was the leader of the Federal party. During that session he made his celebrated speech against the council of appointment, concluding by moving that the members composing that body be immediately arrested.

He was one of the earliest and most brilliant attorney-generals of the State,—succeeding, in 1795, the celebrated Nathaniel Lawrence. Identified with the early struggles and triumphs of the Federal party, and with the early history of the New York bar, it is not strange that his name stands out conspicuously in the history of the State.

Perhaps the early political contest of his father gave Ogden a certain dislike for the political arena which he never fully overcame; for, whatever success awaited him there, he always retired from it with pleasure to the more congenial pursuit of his professional duties.

In the autumn of 1825 the Democrats of Orange County unanimously nominated him for member of Assembly, and he was elected by a very large majority. His reputation as a lawyer gave him a high position in the legislature. In the debates which occurred in that body he frequently took part. His eloquence was of that peculiar nature which rendered his speeches always acceptable. Samuel Young was Speaker of the Assembly; unfortunately, between him and General Root, then a member from Delaware, a bitter feud existed.

As the legislature was about to adjourn, the usual vote of thanks was unanimously tendered to Colonel Young “for the able and impartial manner in which he had performed the duties of the chair, during the session.” As soon as this vote was announced, General Root objected to its entry in the minutes of the clerk. A singular and exciting scene occurred. Mr. Hoffman, although a friend to General Root, insisted

that as the resolution had unanimously passed, it ought to be so entered in the journal.

The pointed and laconic speech of Mr. Young to the legislature on this occasion, will be found in another part of this work.

For some time Mr. Hoffman had contemplated removing to the City of New York. At the close of his legislative term, he was offered a partnership by the late Hugh Maxwell, an eminent lawyer of the New York bar, and at that time District-Attorney of the City and County of New York. He was first appointed to that office in 1817, and again in 1821, after the adoption of the new constitution. He continued in office until 1829, when he was succeeded by Mr. Hoffman. He possessed the most rare and peculiar qualifications for a prosecuting officer. Deeply and thoroughly learned in the English and American criminal law, with rare elocutionary powers, a pleasing, genial manner, he was formidable before a jury. But his natural hatred of crime gave him that determination in the trial of criminals which sometimes rendered him obnoxious to the charge of being vindictive in his efforts to convict persons indicted.

The offer of Mr. Maxwell was accepted, and Ogden Hoffman became his law partner and a resident of the City of New York. About this time, Henry Eckford, Jacob Barker, General Swift, Lawton, Mowatt, and others, were indicted by the grand jury of New York, for a conspiracy to defraud the public.

The high social and political position of some of the defendants, the peculiar nature of the crime with which they were charged, the strange, determined, and ingenious defense which they made, gave to the trial unusual significance and interest.

Mr. Hoffman assisted Mr. Maxwell, and he was thus at once placed conspicuously before the public; perhaps on no occasion did he ever appear to better advantage than in conducting this trial. He grappled all the difficulties of the question with facility and boldness;



“he pushed every argument to the uttermost;” and in short, so fully developed the qualities of a great lawyer, that he at once took a commanding position in this new field of action.

As we have seen, Mr. Hoffman commenced life a Democrat, an ardent supporter and admirer of General Jackson. But he believed the United States Bank to be a moneyed corporation created for national purposes, which had proved superior to, and regardless of, legislative restraint, and which controlled, aided and advanced the whole resources and industry of the country; therefore, the removal of the deposits was a hazardous experiment, dangerous to the country and ruinous to its prosperity. When the President actually proposed such a removal, Mr. Hoffman, Moses H. Grinnell, Dudley Selden, and a large number of other prominent citizens, abandoned the Democratic party.

These distinguished personages, in a large and enthusiastic meeting, publicly declared the reasons which guided them in this step. Mr. Hoffman, in an able and statesman-like speech, sustained his compeers in thus deserting their party.

“Men will see,” said he, “that henceforth the relation between the government and the Bank must be hostile, and between the banks selected for holding the deposits mistrust, doubt and uncertainty will take the place of confidence. Without a National Bank, the stability and safety of the whole monetary system will be endangered.”

From that time, during the existence of the Whig party he continued to act with it—devoting, however, but little of his time to politics; the duties and labors of his profession engrossing his time and talents. He gave his attention mostly to criminal business, and for twenty-five years there was not an important criminal trial in the City of New York in which he was not employed as counsel.

Among these was that of the *People v. Richard P.*

Robinson, tried in the City of New York in 1836 for the murder of Helen Jewett. The inflexible determination with which he defended this desperate case, added much to his reputation.

On the morning of April 10, 1836, the body of Helen Jewett was discovered, terribly mangled, in her room, at the residence of Mrs. Townsend, in the City of New York. Between eight and nine o'clock in the evening previous, Robinson came to Mrs. Townsend's and requested to see Miss Jewett. He wore one of the cloaks which at that time were fashionable; and while asking for Miss Jewett he leaned against a post in the hall, so that the person of whom he inquired had a view of his face. Helen was at this time in the back parlor; but hearing the inquiry, came into the hall. The man was then ascending the stairs which led to her room. She followed him up the stairs, and when near him she exclaimed, "My dear Frank, how glad I am that you have come!" They then went up stairs and were not seen again until eleven o'clock, when Miss Jewett came to Mrs. Townsend and asked for a bottle of champagne. After a few minutes that lady took the wine to Miss Jewett's room, where she again saw Robinson, who was holding a candle and reading a book. From that time until the discovery of the murder, no person saw Helen Jewett. The house was closed a little after twelve o'clock. In the course of the night, some one asked Mrs. Townsend to be let out; she made no reply, and the demand was not repeated.

Quite early in the morning she went to Helen's room, and on opening it, a quantity of smoke gushed out. She gave the alarm, and a watchman came in, extinguished the fire, and discovered Miss Jewett's body shockingly mangled with some sharp instrument. In searching the back yard of the house, a hatchet, covered with blood, was discovered; and in a yard adjoining, Robinson's cloak was found. A piece of twine was attached to the hatchet, and an-

other piece, corresponding with that on the hatchet, was found tied to the cloak. The hatchet had undoubtedly been tied to the inside of the cloak by the twine, and thus concealed. It was evident that the man who left the cloak and hatchet escaped by climbing the fence between the two yards. This fence was covered with a heavy coat of whitewash. Robinson was found at his lodgings soon after this discovery; his pantaloons were marked with lime, indicating his contact with the fence in the rear of Mrs. Townsend's residence. He was a young man, about twenty-two years of age, a clerk in a wholesale dry-goods house. His relations with Miss Jewett had been of the most intimate nature, and there appeared no motive whatever for the commission of the terrible crime. He was promptly arrested, committed to jail, indicted, and brought to trial. Ogden Hoffman and William M. Price, afterwards United States District-Attorney, were retained by the friends of Robinson to defend him.

Of all the criminal trials which up to that period had occurred in the City of New York, none created the interest which this did. A week or more was consumed before it was given to the jury.

Mr. Hoffman, "in one of those brilliant, eloquent, and fervid effusions, which in the career of his large and extensive practice, gave him imperishable celebrity, and never-dying fame, opened the case for the defense." He spoke with keen and cutting satire upon the character of the witnesses. He dwelt with great ingenuity upon the question of the identity of the person calling for Miss Jewett on the evening before the murder—upon the significance of the fact, that she accosted the man who called for her in the evening, by the name of Frank, and not Richard; contending that mistakes upon this subject so frequently occur in the common affairs of life, even with respect to persons with whom we have had immediate communication, that before a man should be sent to the



gallows, there should remain no doubt whatever that he was really the person who committed the crime ; especially where there is an entire absence of all motive. On the question of motive, he made a strong and forcible argument. "Where the evidence is merely circumstantial," said he, "the absence of any motive for the commission of the crime, is a strong point in favor of the accused." Finally, the veracity of the witnesses for the people, their tenacity of memory, acuteness and accuracy of hearing and observation, were commented upon with the most sagacious skill by the eloquent advocate. But his own hypothesis of the prisoner's innocence was as bold and ingenious as it was ably maintained.

Mr. Price followed Hoffman in an address to the jury of great power and weight.

The prosecution was conducted by Thomas M. Phoenix, Esq., District-Attorney, assisted by the ablest lawyers in the city, who made every effort in their power to convict Robinson ; but the impression which the thrilling eloquence of Ogden Hoffman made upon the jury could not be overcome. After an absence of three hours and a quarter, they returned with their verdict. They filed into court with that peculiar tread, which nothing but a returning jury has ; amid the most breathless silence of the vast audience assembled, they took their seats ; it was a terrible moment for Robinson and his friends,—a moment in which life or death was to hang upon a single word, and that word was about to be uttered. Those who watched Ogden Hoffman at that moment, as he sat within the bar, apparently calm and emotionless, could discover in the deep lines of his speaking face, the intense anxiety—the contending emotions of hope and fear—which pervaded his breast. At length the clerk arose, and in a voice which rang clearly through the court room, asked the momentous question :

"Gentlemen of the jury, have you agreed upon your verdict?"

The foreman arose and solemnly answered, "We have."

Again the voice of the clerk rolled over the audience: "Prisoner, look upon the jury; jurors, look upon the prisoner at the bar. Do you find the prisoner guilty, or not guilty?"

There was a moment of silence,—a moment of almost heart-bursting suspense. All bent forward to catch the answer, as it came from the lips of the foreman—"We find the prisoner at the bar, not guilty."

Those who have witnessed that portentous stillness which awaits the coming of the storm—one moment a silence so deep that the pulse of nature seems to have ceased, the next the wild sweep of the hurricane—will have some idea of the scene that followed the announcement of this verdict. The pent up emotions of friend and foe gave way, and for a moment a passionate outburst swept through the court room; but Richard P. Robinson was free. The moment the verdict was pronounced he fell insensible into the arms of his friend, Mr. Hoxie.

This unequalled and singularly successful defense loses nothing of its brilliancy when compared with Erskine's defense of Hadfield, or Curran's effort in behalf of Orr. It gave Mr. Hoffman a high rank among the great popular orators of his day and profession.

As a distinguished lawyer said of him: "In criminal cases, he was infinitely the superior of any man at the bar. *Primus inter pares*—he stood without a compeer. Here his perfect knowledge of criminal law—his deep insight into the springs of human action—his solid sense, combined with his surpassing eloquence, gave him a position for which none had the temerity to contend."

His defense of Walker, charged with the murder of his wife, was another of those successful and powerful defenses in which he succeeded against circumstances which pointed with fearful certainty against

his client, but which were answered by an ingenious hypothesis, sustained by an eloquence which caused the heart to bow to its supremacy, replete with cutting sarcasm and logical acuteness.

In the character of a prosecutor, he was as powerful as in the defense. This was exhibited in his prosecution of Colonel Schlessinger, a "discomfited fillibuster in Nicaragua," and John L. O'Sullivan, Douglass Benson, and other cases of great importance.

But it must not be supposed that Mr. Hoffman had no abilities as a civil lawyer. On the contrary, some of the most difficult cases, involving the most intricate legal questions ever tried at the New York bar, were conducted by him, as were many of the reported cases adjudicated in the Supreme Court, Court of Errors, and Court of Appeals.

His ideas of the criminal practice will be better understood by a reference to a conversation which he once had with Mr. Evarts, as related by that gentleman himself, who at an early period of his practice had been engaged in a criminal trial against Mr. Hoffman, in which he was defeated.

"I was," said Mr. Evarts, "a stranger to Mr. Hoffman until then; but I have never forgotten, neither the singular kindness of the man, nor the singular wisdom of his counsel."

"Mr. Evarts," said he, "though you conducted this case in a manner highly creditable to you, and though it may not be agreeable to you to know that your efforts have been defeated, let me say to you, that it is the most fortunate circumstance in the result of the trial to you. I was, some years ago, the counsel for a criminal accused of a great crime. The result of my effort secured his acquittal. I gained in professional repute, but I have ever been sensible, though my own conscience suggests nothing to reproach myself with, that the sober sense of the community has taken some umbrage at that result. Now, in the result of this trial, you are safe from this influence.



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Take my advice: adhere to civil business, and let the criminal courts alone."

"He was," continued Mr. Evarts, "a very able lawyer; and I mean it in the sense that every lawyer is able, if he be able at all; he was able to the time, the occasion, and the effect. He had embodied, digested, and assimilated to himself the great principles of the law and reasoning that make up the character of the lawyer."

Mr. Hoffman once said, in speaking of Thomas Addis Emmet, "Listening to him, you were struck with his power; he seemed like a piece of immense machinery, moving with the greatest regularity and smoothness, and yet as if restraining its gigantic power."

Like William Wirt, Mr. Hoffman was entirely the lawyer. The consciousness that his proud position at the New York bar gave him more real fame than could be won in the political arena, kept him from politics; and yet he was strongly attached to his party, and possessed partizan zeal. Often, in the great political gatherings which took place in the city, he was called upon to address his fellow-citizens on political subjects. At such times he was always enthusiastically received, and his country, its institutions, its policy, its interests, its destiny, were the topics on which he descanted. His loyalty to truth caused him to avoid all arts of the demagogue; and he spoke the honest conviction of his own mind "straight out," with an intensity of thought, with an elaborate finish, and a cogency of reason, which marked the productions of the great English statesmen.

In the winter of 1828, he was a member of Assembly from the City of New York. His labors as a member of the Judiciary Committee are remembered by several elaborate reports recommending amendments to the practice and procedure of the State courts—bringing complicated actions to the plainest constructions of law and reason. His touching and beautiful



speech, delivered on the announcement of the death of Governor Clinton, is not excelled in the English language. With the exception of this legislative term, Mr. Hoffman remained several years free from the storms and the anxieties of political life.

At length he was compelled to enter public life for a time. In September, 1836, amid the political contest which resulted in the election of Mr. Van Buren to the presidency of the United States, Mr. Hoffman was nominated by the Whigs of the third Congressional district for member of Congress, and was elected by a large majority.

In the mean time, the pecuniary pressure which followed the issuing of the specie circular, and which was already general and severe, was rapidly approaching its crisis. In May, 1837, the event for some time anticipated by many — a general bank explosion — took place, the banks in the City of New York by common consent suspended specie payment, and a panic followed in the commercial world, unparalleled in its results and duration, and which convulsed the nation, throwing a cloud over the administration of Mr. Van Buren.

Soon after the suspension in New York, the President issued a proclamation for an extra session of Congress, to be convened on the 15th of September following. With the opening of this session Mr. Hoffman entered Congress. In the debates which took place in the House during this exciting session, he took a conspicuous part, though he did not often occupy the floor; yet when he did he always commanded respect and attention. His position on the Committee of Foreign Relations subjected him to great labor. The industry and ability with which he discharged the duties thus committed to him gave him much prominence.

On the 16th of October the extra session adjourned, and Mr. Hoffman returned to his constituency. An immense meeting was waiting to receive him on his arrival in the city, and his reception amounted to an

ovation, such was his popularity. His speech on that occasion was warmly commended.

“I come to you, my masters,” said he, “as your servant, commissioned in an hour of peril with high and responsible duties, to give you an account of my stewardship. I am conscious that it is for you to weigh your public servants in the balance, and, if found wanting, to displace them. No public officer is absolved from his responsibility to the people. Political power is not a prize which justifies arts and compliances that would be scorned in private life. Political power is a weak engine compared with individual intelligence. The great hope of society is individual character.”

He then entered upon a consideration of the distresses of the country :

“In all periods of our history,” said he, “the state of the country has afforded a topic of controversy. One class of politicians, in their zeal to find fault, have been disposed to exaggerate every partial misfortune or local distress ; while others were equally ready to magnify all our advantages—to gloss over failure and mishaps, to set down our increasing prosperity to the credit of political sagacity and skill. As it is frequently more profitable to praise than to blame men in power, the latter class of politicians have been the most numerous and confident ; and not content with refuting the arguments of their opponents, they have, in most cases, treated their complaints as mere factious clamor, proceeding from the sinister motive of private interest or ambition.

“The present times, however, present the singular spectacle of unanimity on the actual condition of the country. Here is, unhappily, no longer any room for controversy on this formerly doubtful point, and the tardy conviction of the most incredulous now yields to the irresistible evidence of facts too notorious to be denied. One universal cry of distress is heard throughout the land. Nor is it particular branches

of industry that have decayed ; but every sphere of industry is at a stand—and this, too, in a community such as ours, with every advantage of agriculture and science, with artizans well trained in every mode of refined and ingenious industry. The laborer has now to struggle against the double calamity of low wages and want of employment. The same causes which have entailed such general distress on the laboring classes, have assailed their employers. Why is it then, that with such unexampled advantages to secure national and individual prosperity, we are reduced to a state of actual wretchedness? What principles of mischief have been operating to counteract the strong basis of society to improvement, and to undermine the solid foundations of prosperity?

“On this question, various and contradictory opinions have been formed ; we all agree that distress is upon us, but differ as to its cause. I propose now to give my reason for the cause of the great evils under which we are suffering.”

He then reviewed the causes of our financial difficulties, and his speech on it was considered at the time as one of the ablest and most statesmanlike dissertations upon the great questions then before the public, which had in any form appeared before the people, and it was read with interest by persons of all parties.

The regular session of Congress opened on the fourth of December, 1837. The great questions before that body were the establishment of an independent treasury ; the bill to repeal the Specie Circular of July, 1836 ; the annexation of Texas ; the petitions for the abolition of slavery in the District of Columbia. These questions, some of them of the most exciting nature, were discussed with an ability which gave Congress a paramount position over the parliamentary bodies of the civilized world. In these debates Mr. Hoffman frequently participated. His labors on the floor, and



on the important committees to which he belonged, rendered his labors arduous and difficult.

On the third of March, 1839, the twenty-fifth Congress adjourned.

Mr. Hoffman was not desirous of a re-nomination ; but the Whigs of his district strongly insisted upon returning him ; and in the fall of 1839 he consented to accept a second nomination for Congress. He was again elected ; from December, 1839, until March 3, 1841, the laborious duties which devolved upon him by the twenty-sixth Congress, occupied the principal part of his time. Before this session closed, he was tendered a re-nomination, but he emphatically declined.

The election of 1840 resulted in the triumph of the Whig party, and the election of General Harrison.

One of the first acts of President Harrison was to appoint Mr. Hoffman United States District-Attorney. The duties of this office were congenial to his taste, and in the discharge of them, new professional honors awaited him. As has already been said, at the expiration of Mr. Maxwell's term as District-Attorney of New York City, in 1829, Mr. Hoffman succeeded him. The experience of six years in the discharge of this office gave him peculiar qualifications for the office which General Harrison bestowed upon him.

He continued to discharge the duties of this office for a little over a year after the accession of Mr. Tyler to the presidential chair, when he resigned. Though "one of the great lights of the Whig party," after retiring from Congress in 1841, he mingled but little in active politics.

In the fall of 1854 he was elected Attorney-General of the State, and served the usual term of two years. This was the last official position which Mr. Hoffman held. From the time of his leaving Congress, almost up to the very hour when death fell upon him, he was engaged in his professional duties.

As has been well said of him by another : "The

great triumphs of Ogden Hoffman were at the bar, and it is no disparagement to others to say, that there he was unequalled. His legal erudition was laid deep in the foundations of great elemental truths. It may be said of him—to borrow the idea of one who combined the philosophy of law with sagacious statesmanship—that as lawyer his mind was not confined within the narrow sphere of the every-day practice of our courts; but it arose to the lofty heights of the great principles of national and public morality.”

As one of the leading journals of the City of New York remarked at the time of his death :

“No man in our city has ever had a larger circle of personal friends. No man in the practice of the law in this State enjoyed more universally, the unqualified affection of the members of his profession. His social qualities were of the highest order. Indeed, his genial and kindly nature influenced him in his course in politics as much as in private life, and saved him from the hostility of opponents.”

As an evidence of the truth of this remark, as soon as his death was announced in the city, the Democratic General Committee immediately assembled. Lorenzo B. Shepard took the chair, and John Cochran offered the following resolution :

“*Resolved*, That the members of this committee have heard with emotions of regret of the decease of Hon. Ogden Hoffman, late Attorney-General of the State, and for many years a representative in Congress from the City of New York; that his uniform frankness and courtesy of character, his honest devotion to the constitution of the country, his services rendered as an officer in the navy of the United States with the gallant Decatur, with his large abilities and capabilities for future usefulness, all combine to impress us with the loss we have sustained in common with the citizens of this State.”

This resolution, originating as it did, from political

opponents with whom Mr. Hoffman had often met in the collisions of party strife, is one of the most beautiful commentaries upon his life and character which could be offered or produced.

In person, Mr. Hoffman was slightly above the medium hight, full proportioned and erect. Two years before his death, an article descriptive of his personal appearance appeared in one of the New York papers.

“Who is that merry-faced, laughing-eyed, slouchy looking elderly gentleman, with thin whitish hair, for whom everybody in the crowd makes way about the City Hall steps, and who pause in their conversation to look at and bow to? Who is it? A pretty question to ask about one of the most beloved of men—one of the most popular, and who for this year, and one to come, will occupy the next highest position in the United States to the Cabinet Attorney-General. You only whisper the question, for not to know him will unquestionably argue yourself unknown. . . . .

“He has been in the legislature, he has been District-Attorney in two counties, he has been United States District-Attorney and member of Congress, before occupying his present office, which was never so well adorned. He has a future, too, of promise, for he has already been named for Governor and Vice-President. . . . .

“He is the best orator in the State by all odds. He speaks with great ease and fluency, in choice language, in well-rounded sentences, and with a grace of gesture and dignity of manner. He can be gay, witty and pathetic, but chiefly excels in the latter. Few who heard his defense of Richard P. Robinson, can forget his ‘My poor boy.’”

It may well be said of Mr. Hoffman, that he was “not of great property, but rich in integrity.” He never aspired to riches, he saw around him, on every side, too much of vulgar wealth, too many instances



of plowmen turned lords, too much tawdry display in those whom fortune relieved of poverty, while she left to them their reeking vulgarity, to desire that kind of distinction.

How many there are in the great metropolis who have bartered happiness, soul, body, manhood, everything, to become wealthy, and who count their wealth by millions, yet cannot purchase with it all, two simple lines that record the fame of Ogden Hoffman.

Mr. Hoffman continued to wear the armor of the bar—to be a contestant in that arena to which he was drawn by his youthful ambition, and where he made his name memorable and historic, until, like a gallant veteran, he fell on the field of his glory.

He died suddenly on the second day of May, 1856, in the sixty-third year of his age.

The general demonstration of public and private sorrow that followed the announcement of his death, attested the estimation in which he was held.

A large meeting of the New York City bar was immediately convened at the City Hall. All the courts in session in the city immediately adjourned, and in many parts of the city business was suspended.

A committee consisting of Ambrose L. Jordon, Joseph Blunt, J. W. Edmonds, Charles O'Connor, Francis B. Cutting and Daniel Lord, were appointed to draft resolutions expressive of the high respect which his surviving brethren of the bar entertained for his memory, and their grief at his loss.

Since that period, the chairman of that committee and several of its members have followed him to the bar of that dread Being to whom the distinctions of earth are nothing, at whose right hand are eternal pleasures and glories.

The demonstration at Mr. Hoffman's funeral has never been equaled in the city, since Hamilton went to his grave.

Mr. Hoffman left one son, who is the present Judge

Ogden Hoffman of the United States District Court for California—a son worthy of his honored father.

The character of Ogden Hoffman, whether as the lawyer, legislator, orator, or the private citizen—the husband—the father—the Christian gentleman, is certainly one to be studied—to be admired—to be imitated.

## GEORGE P. BARKER.

His Character.—Parentage.—Dr. Payson.—Enters Amherst College.—Interesting Incident, nearly resulting in his Expulsion.—His Able and Successful Defense.—Is Transferred to Union College.—Gains the Friendship of Dr. Nott.—Thrown on his own Resources.—Commences the Study of Law while in College.—Alonzo C. Page.—Tries Law Suits in Schenectady.—Incident.—Graduates.—Removes to Buffalo.—Millard Fillmore.—Barker is Admitted to the Bar.—Commences Practice at Buffalo.—Becomes Singularly Engaged in an Important Criminal Trial at Albany.—Touching Incident.—Edward Livingston.—Gratifying Results of the Trial.—Appointed District-Attorney.—Elected to the Legislature.—His Political and Professional Career.—Contest for Mayor.—Election of 1840.—Appointed Attorney-General.—Action of the Buffalo Bar.—Election of 1844.—Re-appointed District-Attorney.—His Health.—Case of Pollock.—Interesting Incident.—Syracuse Convention.—His Last Political Speech.—His Death.—Proceedings of the Bar in Relation to his Death.—Conclusion.

DISTINGUISHED as George P. Barker was in his profession, yet such was his versatility, that the lineaments of his mind and character appear with as much advantage in the politician and legislator, as they do in the lawyer. His early participation in the political contests of the State rendered his intellect active, sagacious, and inventive, without extinguishing and paralyzing sentiment and truth—without creating that insatiable ambition for power and place, which so often ends in cold selfishness, a degraded submission to the corrupting details of party drill, and in a dislike for all the private avocations of life.

Mr. Barker's unswerving devotion to the Democratic party was, with him, the offspring of disinterested patriotism. Fearless in attacking its enemies, dexterous in defense, maintaining its principles with rare intellectual resources, he united his name with those great politicians who have rendered that party

formidable and enduring through so many years, and who, whatever may have been their real or supposed political errors, have sustained the democracy, "with poetry, eloquence, and learning; with the graces of wit, the glow of imagination, the power of philosophy, the strength of reason and logic." In the earnestness of debate, in the struggles of the forum, though often opposed by the most distinguished talents, he had few superiors; while as a private citizen, in the social walks of life, he commanded that respect which his abilities secured him at the bar, or in legislative halls. At times, however, his character, public as well as private, was assailed with singular malignity and pertinacity, by those recriminations of party abuse, which unfortunately are so inseparable from political contests, and which to those who are not utterly callous are almost beyond endurance, and in which no term of reproach is too severe, no vituperation too excessive; so that, as has been well said, the history of most politicians can be written in three sentences: They were born—they quarreled—they died.

There was, in the character of Mr. Barker, a frankness which unveiled his faults; thus rendering him vulnerable to the attack of his enemies. But to the keen and quick susceptibilities of his nature, there was allied an independence, which turned the edge of detraction, causing the malevolence of envy, which snarls at all above it, to pass harmlessly by him.

To say that his character was above reproach would simply be saying that he was not human; but to say that he possessed many virtues, many qualities that redeemed his faults, that among the eloquent, the gifted, and the refined, he was always an equal and a favorite—to say that his faults are in oblivion, is no overdrawn panegyric—it is but a truthful appeal to the adorer and beautifier of the dead—the gathering of those pearls which were the rich earnings of his life, for a votive offering to his memory.

George Payson Barker was the only child of pa-



rents who, contented with a small income, were independent—who, happy in themselves, were free from ambition, and “the mad’ning crowd’s ignoble strife.” The only wealth which they could give their son was the memory of their inflexible integrity, and their unsullied name. He was born at Rindge, in the State of New Hampshire, on the twenty-fifth day of October, 1807. His mother was a sister of the celebrated Dr. Payson, in whom high attainments and rare intellectual powers were blended with the love of God, the love of man, and the love of duty; who preached with power and effect, because he gave himself with a single heart to his sacred office, and who wrote, prompted by “those inspirations which flow from the Rock of Ages.”

While George was quite young, Dr. Payson observed in him a mind susceptible of the highest cultivation, and he determined to give him those advantages for an education which the limited means of his parents denied him. One year and a half the doctor himself superintended the studies of his nephew. It was a fortunate circumstance in the life of Mr. Barker that the foundation of his education was laid by the hands of such a mental architect as was Dr. Payson, whose instruction dilated, nourished, and elicited the powers of his pupil’s intellect, while it gave ardor to his heart, and quickened his young mind to a consciousness of its onward, lofty nature, of its affinity for all that is beautiful, to raise its aim and hope to progress and enlargement. George was also encouraged by his uncle, to practice those athletic exercises and accomplishments which develop the physical powers, while they give grace and elegance to the person.

Such was the progress which young Barker made in his studies that, in 1823, he was admitted to Amherst College. Soon after his entrance into this institution, an incident occurred, which came near resulting in his expulsion. There was a student in the college at this time, by the name of Collins. He pos-

essed much physical power, and, conscious of his great strength, he was bold, impudent, and tyrannical to all who did not possess the courage and strength to resent his swaggering insolence. This person soon commenced asserting his supposed superiority over young Barker, who, for the sake of avoiding a collision, submitted patiently to the assumptions of the bully, hoping that time would change his conduct towards him. At length this insolence became so insupportable that George was advised, by one of the students, to resent this treatment, even at the expense of a fight, "for you must not submit to this conduct any longer," said he.

"If I fight him I shall be expelled," was the reply.

"I don't believe you will be expelled; at any rate you must take your chances on that, for you cannot remain here, under these circumstances."

"I will report him to the faculty," said George.

"And be laughed at by all the students in the college," said his friend.

"Well," said Barker, after a moment's reflection, his fine eyes flashing fire, "the next time Collins gives me any of his insolence, I will thrash him, or he shall me, expulsion or no expulsion."

"Are you sure you can do it?" asked his friend.

"Wait and see;" was the laconic reply, and the young men parted.

The next morning as Barker, in company with several of the students, was about entering the chapel, at the hour of morning prayer, Collins came hastily up to him, and attempted to crowd him from the walk. Failing in this attempt, he made another, but without success.

"Do you dare brave me in this way?" said Collins, enraged at the firmness with which his attempt was resisted.

"I do, sir; and I dare do more," said Barker.

"And pray, Mister what's your name, what do you propose to do?" said Collins.

“To tell you that you are an insolent puppy!” was the reply.

“Take that,” said Collins, striking Barker in the face with a pair of wet gloves which he held in his hand.

The next instant he received a blow from Barker which sent him reeling and bleeding to the ground. Recovering himself, Collins sprang at his assailant with the fury of a tiger; but he had now found his match, and another heavy blow again prostrated him upon the ground. This time Barker followed up his advantage; planting his knees on the breast of the enemy, he prepared for further vengeance; but a cry for mercy now arrested the uplifted arm of George, instantly bringing back all the generous impulses of his nature. Releasing his now thoroughly conquered foe, he aided him in regaining his feet. Collins did not attempt to renew the contest, but slunk abashed and ashamed to his room. Fearing expulsion, he soon after left the college.

Barker was summoned before the faculty to show cause why he should not be expelled for disregarding one of the rules of the college. He defended himself with such spirit and ability, that he won the admiration of the tribunal before which he stood. After his relation of the affair was concluded, he was asked by the president of the college, what he supposed his uncle, Dr. Payson, would say about his conduct?

“I don’t know what he would say, but I know this, had he been in my place, he would have represented the church in two aspects,” was the reply.

“What two aspects of the church would he have represented, sir?” asked one of the professors present.

“The church militant, and the church triumphant; for he would have fought Collins as I did, but he would have thrashed him much worse than I did, or else I am mistaken in the blood of the Paysons,” said George.

“Young man,” replied the president, endeavoring to suppress a smile, “your uncle is a man of peace”—

“And of spirit,” said George.

“Do not interrupt me, sir,” said the president. “As I was saying, your uncle is a man of peace; he fights with the sword of the spirit, but with no carnal weapons, in obedience to that awful voice, which bade our fathers be nearest of the congregation to the vision. In future, curb your passion, and do not attempt the heroism of Hercules and Thesus. With old Polonius, I will now say, ‘beware of entrance to a quarrel.’”

“I followed the advice of Polonius to the letter, and endeavored to avoid ‘an entrance to a quarrel, but, being in, I bore it that the oppressor may beware of me.’ Was not that his advice, sir?” said George.

“You have made a good defense, sir,—a defense which smacks of the lawyer. Your uncle, I fear, will find you a disciple of Blackstone, instead of a student of theology. We excuse you this time, because the provocation which moved you was great.”

With these remarks Barker was dismissed from further censure. This was the only quarrel in which he was engaged while at Amherst.

He was regarded as one of the most promising students in that institution. In the various literary exercises in which he engaged while there, he won the commendation of students and faculty. Dr. Payson was a warm personal friend of the late Dr. Nott, of Union College. Anxious to place his nephew under the instructions of that truly eminent scholar, he procured his honorable discharge from Amherst, and in October, 1826, he was regularly entered a student at Union College; here he maintained the high reputation which he had gained at Amherst. Unfortunately, however, when he had been at Schenectady a half year, pecuniary embarrassments overtook his uncle, and during the remainder of his time in college, he was mainly dependent upon his own resources for support. But accepting this new turn of affairs with cheerfulness,



he encountered the difficulties in his way with that determination which caused them to yield before him.

Having decided to adopt the legal profession for his future occupation, he entered his name as a student at law, in the office of Hon. Alonzo C. Paige, of Schenectady, an able and distinguished member of the New York State bar, the author of Paige's Chancery Reports, and subsequently one of the justices of the Supreme Court of the State, for the fourth judicial district. He was a lawyer of extensive and varied learning, an efficient and gifted writer—a judge of great judicial ability blended with that high-toned courtesy which rendered him a favorite with the profession. It was a fortunate circumstance for young Barker that he made the friendship of this eminent lawyer. Mr. Paige at once appreciated the active mind, the abilities and the industry of his student, and therefore encouraged and assisted the young man in various ways.

Devoting all the time he could spare from his other studies to the law, he soon gained sufficient legal knowledge to enable him to successfully try causes in the minor courts of Schenectady.

The first case which he attempted to try, was in the defense of several college students arrested for a riot. Appearing before the magistrate on the day of the examination, armed with his authorities, he boldly took his seat at the table opposite the counsel for the prosecution, who was a lawyer that in justices' courts had attained considerable notoriety. At first the lawyer regarded his young antagonist with contempt; he even attempted to try his wit upon "the unfledged nursling of the bar," as he called Barker. But he soon found in his young antagonist "a foeman worthy of his steel." When the prosecution closed the evidence, George moved for the discharge of the prisoners, on the ground that no riot had been established within the purview of the law. He sustained

his points with an ingenious argument fortified by competent authority, and the court sustained him.

This trial was witnessed by a large number of students and many other spectators; its result placed George conspicuously before the public, while it rendered him famous in the college. From that time, he had more retainers than he could possibly attend to; and though his receipts from them were considerable, they were not sufficient to defray all his expenses, and he was obliged to incur a small debt to the college, which in a very short time after graduating he promptly paid.

Among his classmates were the late Preston King, Hon. Rufus W. Peckham, W. W. Campbell, Minthorne Tompkins, Ambrose Stevens and other gentlemen who are now, or have been, eminent before the public. Several gentlemen who afterwards became his fellow citizens at Buffalo were in college with him, members of a junior class.

On the 27th day of July, 1827, Mr. Barker graduated with honor. He delivered a commencement oration which revealed the energy and power of his mind—his refined taste, original thoughts, robed in a well tempered imagination. Soon after graduating, he visited Buffalo; so pleased was he with the appearance of the village, as it was then, so palpably did he behold its future business developments, that he decided to make it his future home. On leaving Schenectady, Mr. Paige gave him a letter of introduction to the late Stephen G. Austen, Esq., a leading lawyer of the Buffalo bar, in whose office Barker immediately entered as a student at law. With the exception of Mr. Austen, he was a stranger in the new home which he had selected, and his means were exceedingly limited. The struggles and difficulties which lay before him did not impede his progress; they rather accelerated it. He at once engaged in the trial of causes before courts held by justices of the peace in the village, and in various parts of the county. The experi-

ence of several years' practice in these courts while in college, rendered him a strong advocate before them.

Hon. Millard Fillmore was then a young lawyer, just admitted to the bar; he was often an opponent of Barker, and it is said by those who witnessed their early professional contests, that frequently, in the trial of a cause before a justice and a jury, intellectual powers and legal learning were exhibited by them which would have been creditable before any court. These young men were entirely different in their minds and intellectual development.

As a speaker, Mr. Fillmore did not possess that brilliancy—that electrical influence over his auditors—which Barker did. But he possessed in a high degree, that weight and strength of intellect, that power of discovering what is prominent and commanding in a subject, and then seizing upon its good points, and of throwing lesser matters in the background; thus securing unity and distinctness of impressions, and as a consequence, a powerful influence over his hearers. His arguments were always remarkable for the soundness of the principles on which they were based. He was the untiring, ever-watchful sentinel, who guarded his subject, and protected every avenue through which an opponent could approach it. These characteristics distinguished his legislative speeches, and tended to strengthen those able, learned and dignified State papers which emanated from his pen, in those days, when, as an American statesman, he stood conspicuous before his country and the world.

Mr. Barker invoked in support of his arguments, not only the muse of poetry, but the assistance of a subtle philosophy, and an eloquence which fascinated, charmed and subdued. The career of these young men, thus commenced, led to their future eminence and distinction; the one to be admired as the lawyer and legislative orator, the other to be advanced through all the spheres of official position, until he occupied the executive chair of the nation. Both of

them are characters worthy the imitation of young men. They were each the artificers of their own fortunes, each attained their eminent positions unaided by friends or wealth. Their lives and career attest the glory of our institutions, proving the couplet of the old poet true :

“ 'Tis a common proof  
That lowliness is young Ambition's ladder.”

With untiring energy and industry, Barker sustained himself with credit and honor until October, 1830, when he was admitted to the bar. He had been a close and ardent student,—with his legal studies he had investigated the politics of the nation, the origin of parties, he had carefully marked their distinctive characteristics, and their influence. From reason, conviction and inclination, he early attached himself to the Democratic party.

George J. Bryan, Esq., in his interesting memoir of Mr. Barker, thus speaks of his early politics :

“At the time of his arrival in Buffalo, the State was agitated by the conflicting strife of three political parties: the Jackson, or Democratic party, the National Republicans, and the Anti-Masonic party. In his district, the eighth senatorial, the Anti-Masonic party prevailed by a very large majority, over both the others, and the Democratic party was the smallest of the three. Actuated by no motive but principle, he did not hesitate in which of these parties to enroll himself; regardless of interest, immediate or remote, and fully sensible of the hopeless minority of the Democratic party, he fearlessly entered its ranks, and with all his energy, zeal and ability, entered into the support of General Jackson and the principles of the Democracy.”

There was something in the name and fame of “Old Hickory,” as he was familiarly called in those days, peculiarly attractive to young and ardent minds like Barker's; nor can it be denied that the experienced,



the middle-aged and the old, were equally fascinated by the prompt and undaunted valor and Roman heroism of him who in youth swore "by the Eternal," that he would make his way to fame.

Immediately after being called to the bar, he formed a copartnership with his friend and patron, S. G. Austen, Esq. Though the Erie bar had not attained that high reputation for ability which has since distinguished it, yet at that period, Barker was obliged to contend with men of eminent and powerful abilities, experience and learning; but he entered the arena with confidence, and he at once assumed a position of great respectability at the bar.

The first official position which he occupied, was that of clerk of Buffalo village, to which position he was appointed in 1829. This office did not in any degree interfere with his legal labors, and his professional advancement was unusually rapid. There were in the character and manners of Barker features which were highly attractive; prominent among these, was the singular grace of his conversation which abounded in wit, fully instinct with a variety of knowledge, diversified with reading and anecdotes of rare interest. There were times in the latter part of his life when he was not in a pleasant humor—times when a habit which all who knew him regretted, caused clouds to settle over a temperament bright, clear, and, at times, even beautiful.

The selfishness with which he was sometimes charged, did not really exist in his character. Those who knew him best, insist that he was generous to a fault. An instance is related which occurred in his early practice that illustrates very many of the tendencies of his character.

In October, 1832, he was detained at Albany for two or three days, awaiting the arrival of certain persons with whom he had important business. At this time a Court of Oyer and Terminer was in session in that city, at which the late Judge James Vander-

poel presided. The next morning after his arrival, he sought the court room for the purpose of passing away the time in observing the proceedings of the court. His route led him by the old Albany jail. Just before reaching that grim receptacle of crime and misery, two officers, having in charge a pale young man, apparently about twenty-one years of age, came from the prison, stepped upon the walk directly in front of him, and moved in the same direction he was going. The prisoner was of middling size, slender in form, with agreeable, pleasant features. As he reached the street, the pleasant sunlight, the pure, soft air of that October morning, seemed to exhilarate him, and his dark eyes glanced with something like happiness, as he lifted them to the clear sky, "where all things are free." The three persons walked with a rapid pace towards the court house; they had proceeded but a short distance, when they were met by a very respectably appearing, decently clad woman, about forty years of age. The moment her eyes fell upon the prisoner, she sprang forward and clasped him in her arms, exclaiming,

"O George! George! My boy! my son!"

The sudden appearance of the woman caused the officers to halt.

"Mother, why did you not wait at the court house for me?" said the prisoner, endeavoring to smother his emotions.

"Because I did not see you there, George; and I thought perhaps you might not have your trial to-day, after all, and I started to see you at the jail. O my boy! my darling!" said the poor woman, her voice now broken with sobs; "are they going to try you now?"

"Yes, mother, I am to be tried to-day; but calm yourself, I trust all will be well with me, for God above us knows that I am not guilty," said the young man.

"You guilty, George? you guilty?" O no, no! you are not. You cannot be guilty, you are so good,

so true—there—there now you look just as you used to when on your knees I taught you your first little prayer, in our dear old”—

“Come, come, woman, stand aside, and don’t hinder us any longer; the young man is wanted up yonder,” said one of the officers, pointing towards the court house.

“O, sir,” said the woman, turning to the speaker, “do see that he is not injured—he is innocent, I know he is.”

“How do you know that, woman?” gruffly asked the other officer, “maybe you can swear for him.”

“Because—because I am his mother, and—and I taught him his prayers and”—

“Yes, yes, we know all about that. You ain’t the first good mother that’s had a bad boy for a son, a real rum one at that,” said the first officer. “Come on, my covey. Twelve men have something to say about your case.”

Barker’s progress was arrested by this pathetic scene, of which he had so singularly become a silent witness. Deeply touched by the appearance of the mother and the son, he followed them to the court house. Just before ascending the stairs which led to the court room the young man paused a moment:

“Mother,” said he, “is Mr. Aikin going to undertake my defense?”

“Not unless we pay him in advance, and—and—we have no money, you know.”

“O God, have mercy on me! What shall I do?” said the young man, losing control of himself in his mental agony.

“Come along; don’t stop to blubber here. The court will appoint some one to defend you,” said one of the officers, seizing the prisoner by the collar, and urging him up the stairs, followed by his weeping, trembling mother.

He was soon seated in the prisoners' box, to await the proceedings of the court.

The young lawyer followed the officer into the court room, and seated himself within the bar. He had now a better opportunity for observing the young man, who had recovered, in a measure, his composure. The pallor which overspread his countenance, had given way to a slight flush; his clear eye, delicate and finely molded features, bespoke intelligence, but not guilt. It was a face to be studied, and it was studied by Barker. "If that young man is guilty of any serious crime, then I am no judge of features," he thought.

Court had not yet opened for the day; a few lawyers were in the bar; the officers in attendance were lounging carelessly on the benches; some of the jury had found their way into their seats, and were conversing in a low tone with one another, occasionally glancing at the prisoner in the box; while the spectators present regarded him as a being whose trial was, perhaps, to afford them some amusement or pastime. The circumstances which surrounded him—the place he occupied—caused them to regard him as a felon who only awaited a trial to be sent to a felon's doom.

Presently a loud rap announced the approach of the judge; the usual proclamation was made, and the court was ready for business.

"Sheriff," said the District-Attorney, "is George Ames in court?"

"He is," was the reply.

"I now move the trial of George Ames, indicted for burglary in the first degree," said the attorney for the people.

"Has the prisoner counsel?" asked the judge.

"Have you counsel, Ames?" asked the District-Attorney.

"No, sir; I expected Mr. Aikin to defend me, but he refuses now," said the young man.

"Why does he refuse?" asked the court.



“Because I have no money to pay him,” was the reply.

“Then, as you have no means to employ counsel, the court will see that you have counsel.”

Judge Vanderpoel now addressed a respectably appearing lawyer present, and asked him to undertake the defense of Ames, but he declined, alleging that he had pressing business; the court then applied to another, who also declined; finally there was no one in the bar who would undertake the defense. The judge appeared to be puzzled.

“Gentlemen,” said he, “I do not desire to compel any person to defend this man, but”—

Just at this moment a small sized, sharp-featured, shrewd appearing lawyer entered the bar. There was a kind of avoirdupois look about him, and his eyes appeared like a pair of nicely balanced scales, made for the purpose of weighing the amount of coin one happened to have in his possession. As they glanced at a person, his eyebrows were raised or lowered, in proportion to what he conceived the man had in his pockets, and they seemed to say: “Ah, he has so much;” or, “Oh, he has only a—ah, let me see again, oh, yes, has only a very little.” He was well known at the Albany bar forty years ago, as a thriving lawyer who forgot everything in his fees.

“Mr. K.,” said the judge, addressing this lawyer, “the court desire you to undertake the defense of George Ames, the prisoner at the bar.”

“Ah, yes; your honors can always command my poor services in that way, but I have seen the prisoner before, and I think in view of his circumstances—his means—I mean, the nature of his great offense, that he had better plead guilty and done with it.”

A sob of deep, heart-broken anguish, resounded through the court room; it was from the poor mother who heard in this the knell of her son’s doom.

“If the court please, I will undertake the defense

of that young man," said Barker, in a voice whose tones attracted the attention of every one in the court room.

"The court are unacquainted with you, sir, and we desire that the prisoner should be ably defended," said the judge, in a tone that clearly indicated his surprise.

"If your honors please, I said I would undertake his defense, and I now say that he shall be fairly, if not ably defended; and I say more, he shall not be convicted unless his guilt be made apparent."

"Do you desire the assistance of Mr. K.?" asked the judge.

"No; if your honors please, I will assume the entire responsibility of this defense."

The judge signified his assent.

Edward Livingston was then District-Attorney of Albany County. He was learned and eminent in his profession, eloquent at the bar, a pleasing speaker in the popular assembly, a politician of rare capacity and many executive endowments, a formidable prosecuting officer. He represented Albany in the Legislature several years, and in 1837 was chosen Speaker of the Assembly, discharging the duties of that distinguished position with marked ability.

Such was the man with whom the young lawyer was about to contend.

"I ask your honors to postpone this trial until tomorrow morning, to give me an opportunity of consulting with the prisoner," said Barker.

As Mr. Livingston made no opposition to this motion, it was granted.

Language cannot describe the surprise, joy and gratitude of the young man and his mother at this unexpected appearance of a defender. A short consultation with them, convinced the lawyer that his client was not guilty, although he was surrounded by a train of circumstances which seemed to point with

almost indubitable certainty to him, as a young but hardened criminal.

He was the only son of the poor woman present, and she was a widow. Their residence was at Fort Ann, in the County of Washington. A few days before the commission of the crime with which he was charged, he came to Albany for the purpose of obtaining employment; here he soon made the acquaintance of a very friendly appearing man, who apparently took much interest in him and kindly offered to assist him in obtaining employment. One evening he was invited by this friend to accompany him and examine some personal property which was then in a certain building that he had rented. Although it was quite late when this proposal was made, George assented. On their way, his friend overtook two persons with whom he was acquainted, and whom he invited to accompany them; they consented; and in a few minutes the young man and his companions found themselves in the rear of a large building. His friend now informed him that he greatly desired to enter the building, which was his store; but as he had forgot the key, he produced a small iron bar which he handed to George, directing him to pry open the shutters to one of the windows and force his way into the building, promising to reward him very liberally for his trouble. In a moment, the young man understood that he was in the presence of burglars, and, horror stricken at the thought, he attempted to rush from their presence; but ere he had made two steps, he received a heavy blow upon the head, which felled him to the earth insensible. When he returned to consciousness, he was at the police office, with a bandage about his head. As soon as he was able to be moved, he was conducted before a magistrate, and his examination took place. From the testimony, he learned that the building was broken open and entered, and that he was one of the persons charged with the crime of breaking it open. All of the wretches succeeded in making their

escape, excepting one who was arrested the next morning; turning State's evidence, he implicated young Ames in the crime, alleging that he entered the store, that while there, he stumbled over some object and fell; his head striking the corner of the counter rendered him insensible, that when they made their exit from the building they removed their wounded companion, intending to convey him to a place of secrecy until he recovered; but when they had proceeded a few paces from the building they were alarmed and hastily fled, leaving him on the ground where he was discovered by the police. Such was the evidence of the man before the magistrate.

Soon after his incarceration, George wrote to his mother; the poor woman came to the city, employed the lawyer who has been referred to, but because they had no funds to pay him he abandoned the defense. By a singular intervention of Providence, George P. Barker had now become his counsel. The story of the young man carried conviction with it, and aroused all the generous sympathy of the young lawyer's nature. Ascertaining the name of the surgeon who dressed the wound of Ames, he immediately called upon him; he was a gentleman of intelligence and skill; he distinctly recollected the circumstance of dressing the prisoner's head, and the nature of his wound, and did not hesitate to state that it could not have been inflicted by a fall—that it must have been the result of a blow from a club or some heavy instrument.

The next morning the trial began. Mr. Livingston conducted the prosecution with great ability; he firmly believed the prisoner guilty, and therefore omitted nothing that tended to convict him. Entering upon the trial without any introduction to the young stranger who thus singularly became his opponent, he did not stop to consider or care who he was. The case, however, had proceeded but a short time before he was aware that he had no common intellect to deal



with, and he conceived a high respect for him, whoever he might be.

The cross-examination of the convict witness was most searching and effectual. The keen eyes of Barker seemed to pierce his very soul, from the commencement to the end, they were not removed from him. At first, he sustained himself with a balance and composure which seemed to baffle his interrogator, but at length, he stumbled, hesitated, and became confused, and when he left the witness box, it was evident that his testimony had been materially shaken. The cross-examination of the proprietor of the store which had been entered, elicited the fact that no blood was found in the store; that the corner of the counter against which the witness had testified Ames had fallen, did not exhibit the least appearance of any such occurrence. The officer who first discovered the prisoner on his cross-examination testified that on the spot where his head rested, a large pool of blood had gathered.

At length the District-Attorney rested. Barker, in a short, plain and concise statement, presented the theory of his defense to the jury. The only witness whom he called was the surgeon, whose evidence corresponded with the statement he had previously made, establishing the fact that the wound on the head of Ames could not have been made as the witness for the people had sworn—that it was inflicted by a club, or some heavy instrument, and he gave his reasons on which his opinion was founded, clearly and intelligibly.

With this evidence, the young lawyer rested his case and went to the jury. In his whole subsequent professional career, he never made a more successful or a more brilliant defense. In the language of one of the journals of the day, "his summing up of the evidence was a splendid effort." Many of the jurors were present when he made his generous offer to defend the prisoner, and they were conscious that he

was acting from the sympathy and generosity of his nature ; they therefore believed him sincere in his statements. He contended that there was no evidence whatever against the young man, except that he was found wounded near the place where the crime was committed—that the uncorroborated evidence of the convict witness was not sufficient to convict ; besides, that witness was contradicted by the surgeon, and also the circumstances. He dwelt with much emphasis upon the fact that no blood was discovered in the store, because the wound was of such a nature that it must have bled copiously when it was first received. That a large quantity of blood was discovered under his head when found by the officer, established the fact that he received the blow where he fell ; especially as there was no evidence that blood was found in any other place.

Those who knew George P. Barker, can well understand the nature of his address and its effect upon the the jury. Mr. Livingston's reply was all that could be expected from a lawyer so distinguished ; but the defense of his opponent had taken him by surprise ; it was an effort which would have been creditable to the most eminent member of the Albany bar, and he saw that it had made an impression upon the jury. His argument was keen, searching, and profound. The charge of Judge Vanderpoel was, as the charges of that learned and able judge always were, a close adhesion to the law and his duty, impartially and fairly discharged.

The jury retired, and after an hour's absence, returned into court with a verdict of not guilty. The great, the rich reward of Barker was the almost frantic joy with which the verdict was received by the mother and son.

“The God of the widow and the orphan has sent you to us, sir, in our distress, and His blessing will descend upon you through all your days. We have

no money with which to reward you ; I have seen better days, but now I can only thank you from the very depth of my heart of hearts," said Mrs. Ames, on taking leave of Mr. Barker.

"Some time I shall reward you for what you have done for me," said young Ames ; the glittering drops which stood in his eyes, evidenced his deep gratitude ; and thus mother and son took their leave of their generous benefactor.

Years passed away, and this event was nearly forgotten by Barker, in the vicissitudes of his professional and political life. One morning in the winter of 1836, while he was member of Assembly, a well dressed, gentlemanly appearing man called at his room in Albany.

"Do you not remember me, Mr. Barker?" said he.

"I do not," was the reply.

"My name is Ames—George Ames—whom you once defended against a serious charge in this city," said the man.

Another glance at his visitor convinced Barker that the prisoner whom he had defended for burglary, at Albany, was before him.

"I learned that you were in the city, and I could not refrain from calling upon you," said Ames.

He then in a few words informed his benefactor that he was a well-to-do farmer, that fortune had smiled upon him and given him prosperity. After conversing a half hour, he arose to take his leave.

"Here is a small package which my mother, my wife, and myself have made up for you. Do not open it until I have left—I trust it will convince you that my words to you have not been forgotten."

He took his leave and Barker opened the package ; to his surprise, he found it contained a bank bill for two hundred dollars.

Ames and his defender have both passed beyond the trials of earth ; but a son of the former still survives, who treasures the name of George P. Barker

with a sort of poetic reverence. To him the author is indebted for one of the most touching and agreeable incidents in the life of a distinguished lawyer. The trial which has been described resulted in a life friendship between Livingston and Barker.

In the autumn of 1831 the latter received the nomination for member of Assembly for the County of Erie. His party was then in the minority, as we have seen, yet in Buffalo he received a very respectable majority, while in the county he greatly reduced the usual majority of the dominant party. In June, 1832, the partnership between Messrs. Barker & Austen was dissolved, and the former entered into a business arrangement with John T. Hudson, a very respectable member of the Erie bar. Barker was soon after appointed Attorney for the city of Buffalo, and early in the year 1833 he received the appointment of District-Attorney for the County of Erie.

In discharging the duties of this office, he was brought more conspicuously before the people. He exhibited such remarkable powers as an advocate, such a polished yet practical and pointed elocution, that he at once arose to a commanding position at the bar, and participated in the honors and emoluments of his profession. It was a happy and peculiar quality of Mr. Barker, as a lawyer, to excite the esteem and command the confidence of the people.

“I like that Barker,” said a farmer from one of the distant towns in the County of Erie, on his return from Buffalo, where he had been attending court as a juror; “I like him because I think he is honest, that is, if a lawyer can be honest.”

After discharging the duties of District-Attorney for three years, Mr. Barker resigned, and that accomplished orator and lawyer, Henry K. Smith, was appointed in his place.

In the summer of 1834 he was married to Miss Abby Coit, an accomplished and highly respected lady of Buffalo. His marriage greatly enhanced his



happiness. In the domestic circle he ever found a refuge from the cares and labors of his professional and political life.

At an early period of his political career Mr. Barker became the leader of the Democracy in the County of Erie. His political sagacity, his intrepidity of character, and cool, discriminating judgment, peculiarly qualified him for that position, and under his guide the Democrats of that county soon became the victors, emerging from an almost hopeless minority.

In the fall of 1835 he was again nominated for the Assembly. It has been tersely but truthfully said, that envy, like a sore eye, is injured by anything that is bright. This proved true in the case of Mr. Barker. His rapid advancement in his profession, his many shining qualities as a speaker, presented him as a mark for envy, hatred and malice, to those who felt their inferiority to him. To defeat him every effort known to political warfare was resorted to. From the fledgling politician, who, like the young bird that could bite before it could fly, to the veteran, that knew when and where to fasten his fangs of malevolence, he was assailed with the most violent and bitter attacks.

The canvass, however, resulted in the election of Mr. Barker by a very decided majority, and the County of Erie was added to the Democratic counties of the State by his popularity.

He entered the Legislature, January 5th, 1836. Such were the circumstances under which he was elected, that they tended greatly to enhance his popularity in that body. In both branches the Democratic party were largely in the majority; and he thus commenced his legislative career with every prestige of party success in his favor. William L. Marcy was then governor, John Tracy, of Chenango, was lieutenant-governor, and Charles Humphrey, of Tompkins, was speaker of the house. As a presiding officer Mr. Humphrey had few equals in the State. He was a lawyer of profound understanding, of fine par-

liamentary abilities, possessing that quick and rapid perception so necessary to the presiding officer of a deliberative body, while his manners, address and comprehensiveness of mind, adapted him to the position which he occupied.

Mr. Barker was now in the twenty-eighth year of his age; he had already attained a high position as a lawyer, and the legislative abilities which he developed in the Assembly gave him a high reputation as a legislator. Although some of his speeches had a sort of parliamentary preamble to them, a certain air of affected modesty and ostentatious trifling, yet he enriched every subject to which he applied himself, by the vigor of his thought and the beauty of his language. His speeches were always better than his writing.

Young as Mr. Barker was, on his first entrance into the Assembly he was honored by the second position on the Committee of Ways and Means and that of Colleges and Academies. His industry and devotion to the duties thus imposed upon him were soon publicly acknowledged.

Among the members of this legislature was Preston King, who after that period was elected to many high and distinguished positions. He was then the leader of the Democratic party in the House; perfectly skilled in all the detail of politics and the subtleties of parliamentary proceedings, a close, terse and methodical debater, it is not strange that he should have occupied a commanding position. Richard P. Marvin, now and for many years a distinguished judge of the supreme court for the eighth judicial district, Mark H. Sibley, Luther Bradish and George W. Patterson were also members of the House at this time.

Among such men George P. Barker made his entry into public life. His first speech was delivered January 16th, 1836, on the bill for the relief of the city of New York, which had been a short time previously visited by a terrible fire. It was characterized by

great modesty, yet it commanded the attention of the House for its firmness and high-toned liberality. This speech was followed by other speeches, delivered at intervals during the session, all which tended largely to enhance his popularity. In those speeches he exhibited that clear discrimination, that facility of comprehending seemingly anomalous facts, that knowledge of political economy and statistics, which are not often united with a mind so imaginative as his. They were struck out in the conflict of mind with mind, in the heat of debate, without that preparation which a writer would have given to the subjects; and yet they have the methodical arrangement, the elaborate strength of a carefully prepared essay; and the thought may be indulged, that had he lived the recluse student, had he turned his attention to recondite studies, he would have enriched his country's literature, or added new treasures to science; but the bar would have wanted one of her brightest ornaments.

Without attempting to follow him through all his legislative career, it is perhaps enough to say, that in every position or phase of that career he was fully equal to each emergency that presented itself. Sometimes he indulged in an exuberant humor; sometimes his vanity led him to exhibit the facility with which he could round a period, the dexterity with which he could argue, object, or rejoin; but this was rare, and often when apparently most unprepared he exhibited fresh powers of mind which had not before been exerted.

On retiring from the Legislature, his profession became the all-engrossing theme of his life. This was partly from professional ambition, and partly from that characteristic which absolutely compelled him to enter ardently into anything which he undertook to do. He carried to the bar a knowledge of the law, which gave him great power and weight, and yet per-

haps his strength did not consist so much in his legal learning, as in his ability to deal with the facts and circumstances of a case before a jury.

It has been said that he was not a laborious student, but it is certain that he devoted much time to silent study—that he read with pleasure and profit the productions of elegant and accomplished scholars, historians and logicians, while he was a close and critical legal student. His legal arguments, prepared for the court, in banc, abounded with the knowledge, the philosophy, and the reasons of the law; thus proving that there were hours which he devoted to the severest mental labor.

In the autumn of 1836, his political friends tendered him the nomination for Congress, but so engrossed had he now become with his professional duties, that he was compelled to decline.

In April, 1837, he formed a copartnership with the late Seth E. Sill and Seth C. Hawley, under the firm name of Barker, Hawley & Sill. This firm soon became distinguished for the extensive legal ability which it combined. Mr. Hawley, however, retired from it in the fall of 1839, and the business was continued under the name of Barker & Sill, until the former was elected to the office of Attorney-General, in 1842.

Mr. Sill, on the adoption of the constitution of 1846, was elected a justice of the supreme court for the eighth judicial district. He was a lawyer of fine legal attainments—a judge who adorned the bench—and whose opinions enriched the legal learning of the State. He died on the fifteenth day of September, 1851; his death was regretted by the bench and bar throughout the State.

In the spring of 1840, the first popular election for a Mayor of Buffalo occurred. Mr. Barker was nominated by the Democracy as their candidate for that office. Sheldon Thompson, a highly respectable citi-



zen of that city was the opposing candidate. The canvass was closely and even bitterly contested. The great wealth, extensive acquaintance, and personal merit of Mr. Thompson, with the additional circumstance, that he was connected with the dominant party in the city, rendered him a powerful competitor. Under all these disadvantages, Mr. Barker entered the contest, and such was his popularity, that he was defeated by a majority of only ten.

In the presidential campaign of 1840, he entered the canvass with all the ardent zeal of his nature. The brilliant and stirring speeches which he delivered in various parts of the State, aroused the Democratic legions to renewed action; until they moved with their accustomed activity over fields consecrated by former victories, inspired by the genius of their great party leaders; but in vain, the popular tide was against them; — the new tactics of the Whig leaders prevailed, and the Democratic party was everywhere defeated.

But the Democracy of New York retired in good order from the field, and in the election of 1842, they were once more triumphant in the State. To this result, perhaps, no man in Western New York contributed more than Mr. Barker.

There were an unusual number of men of talent elected to the Assembly at this election; among whom were Horatio Seymour, John A. Dix, Michael Hoffman, and Samuel G. Hathaway.

At a caucus of the Democratic members of the Assembly, held February 4, 1843, Mr. Barker was nominated for Attorney-General; his competitors being no less distinguished personages than Samuel Beardley and Robert H. Morris. The former had discharged the duties of that office with singular ability, during the previous term; but Mr. Barker's eminent services in the preceding campaign and in that of 1840,—his brilliant reputation as a lawyer and orator, rendered

him the most popular candidate for the office, and, on the third ballot, he was nominated. When this result was announced, the audience gave a long and rapturous cheer, exhibiting the deep regard which the masses entertained for the name of George P. Barker.

Sanford E. Church, the present Chief Justice of the Court of Appeals, though then one of the youngest members of the House, contributed much to this result.

In the fall of 1842 Mr. Church was elected to the Assembly from the County of Orleans, which was strongly Whig in its sentiments, and, of course, opposed to him; his election was due to his own great personal popularity—a popularity which has never deserted him. The speech which “the young member from Orleans” made in favor of Mr. Barker greatly aided him.

One of the most pleasant circumstances connected with Mr. Barker’s appointment, was the manner in which the intelligence of the event was received by the Buffalo bar, the leading members of which united in a letter of congratulation addressed to him, in the most delicate language referring to his high professional standing, and his popularity in private life, regretting that “the relations which had so long, and so happily continued between them, should for a time be terminated,” concluding in an invitation to partake of a public banquet with them, at some time to be named by him.

Mr. Barker replied to this note in a happy and eloquent manner, exhibiting his deep appreciation of the friendship which prompted this congratulation. He felt compelled to decline the invitation to join in the banquet.

His career as Attorney-General loses nothing in comparison with the great and gifted lawyers who preceded him. At the bar of the Supreme Court in banc, at the various circuits of the State, he came in contact with its ablest lawyers, and his friends had the proud satisfaction of knowing that the greater the

occasion, the greater appeared his capacity for meeting it.

In the fall of 1843, a great Democratic meeting was held in the City of Buffalo; by a general invitation, Mr. Barker was invited to address it. Accepting the invitation, he delivered a speech which is still fresh in the recollection of many who were present. Its power of appeal was unequaled, and told with great effect upon his audience. In the language of *The Buffalo Courier*, "There were passages in it that woke the fiery enthusiasm of the old Democracy of Buffalo—there were also passages that brought unbidden tears to the cheeks of veterans in the Democratic ranks, who surrounded him; it was full of feeling and truth—it went to the hearts of those who heard it."

In the year 1845, he was again appointed District-Attorney for the County of Erie; but his health, which for some time had been impaired by his constant devotion to business, rendered it difficult for him to discharge the duties of the office, and his exertions to do so were at the expense of his vital energies; but he did not falter in the discharge of his duties until the nineteenth day of September, 1846. On that day, as he was commencing the trial of an important suit, he was seized with convulsions, which, after some duration, were followed by a heavy slumber. At length he recovered, but with no perceptible diminution of his mental powers, excepting a certain depression of mental spirits.

The bright, cheerful, almost electrical flow of spirits was gone, the exquisite playfulness of his nature was changed. There were, doubtless, excesses which led to this—the one vice of social life—which delights to fasten on the brilliant and gifted; as it were, to gloat over the stupendous ruins it has made.

After his recovery, he again entered the professional arena with renewed vigor; but in March, 1847, he was again attacked with the same disease, but with

accelerated violence. His strong and vigorous physical nature, however, enabled him again to triumph over disease, and to once more resume the duties of his profession. But it was plain to his friends that the inevitable destroyer had marked him for its victim, and they urged him to relinquish all business, and to devote his time to travel.

For a long time he resisted their appeals ; at last he yielded, and he visited New England—the home of his youth—and amid the thronging memories of the past, he seemed to forget the disease which had preyed upon him. After an absence of three months, with improved health, he returned to his home, and, contrary to the advice of his friends, once more resumed the duties of his profession. But alas ; its duties were so severe that a relapse soon ensued, and he was once more prostrated by disease. Like the soldier who returns to the field ere his wounds are healed, so Barker, before his disease was removed, left his room to enter again those forensic contests, in which so many years of his life had been spent.

The last case which he ever conducted at the circuit, was the People against Pollock, indicted and tried for attempting the life of E. R. Jewett, one of the proprietors of *The Buffalo Advertiser*. Pollock was a young midshipman. His social relations and the intrepid nature of the attempted assassination imparted to the case unusual interest.

Mr. Fillmore appeared for the defendant. The effort which he made has seldom been equaled at any bar. The best efforts of his long and varied professional life did not possess more strength and power. It was singular that Mr. Barker was the first antagonist whom he encountered at the bar in the commencement of his professional life. Devious, ardent and devoted had been the struggle of each since that period ; and now, at that very bar, where, amid the ambition and enthusiasm of their youth, they had met as contestants, they again met, for the last



time. It was the destiny of one to fall in the midst of the strength of his manhood, while the other retired from the arena, to be raised, by a great Republic, to its highest honors, and in the enjoyment of rest unbroken by the toils of public life, in his dignified retreat from the scenes of ambition, the cares of the statesman, to continue in the affections and esteem of a people who ever delighted to honor him.

Mr. Barker, though in feeble health, followed Mr. Fillmore's address to the jury. At first his powerful intellect seemed to glimmer with uncertain light, but at length it began to send forth a steadier flame. The artful regularity, the polished excellence, the exquisite modulation returned, and those powers which had been passive under disease resumed their force, and George P. Barker was himself again. Again, the court, bar, jury and spectators, were held entranced by an oratory which had ever filled them with pleasure and delight. But it was the brilliant gleam of the intellect flashing out for the last time over the ruins of a prostrated physical nature, the bright sunbeams playing around the caverns of death.

With powerful vigor, with the animated elocution of his best days, he pressed the conviction of Pollock. He succeeded, and the young man was sentenced to the State prison for a long term of years. Through the intervention of friends he received a pardon after the accession of Governor Young to the executive chair of the State.

Though Mr. Barker's health was exceedingly feeble, he represented the County of Erie in the State Convention held at Syracuse, September 29th, 1847, a few weeks after the trial of Pollock. This Convention attracted a large attendance of the most distinguished Democrats in the State; among whom were Martin Grover, now a judge of the Court of Appeals, James C. Smith, a distinguished lawyer, and now an eminent judge of the Supreme Court of the State, and many others. It was with pain that these time-honored as-

sociates of Barker witnessed the ravages which disease had made upon him.

The Convention was held at that period when the great schism in the Democratic party began to manifest itself as a forthcoming event. This gave the assembly an interest, which was keenly felt by Barker. He took a conspicuous part in its organization, helping to prepare resolutions, but he was compelled to leave before its adjournment. Returning home, he submitted to the most skillful medical treatment, and the tenderest attention was bestowed upon him; he gained so much in strength that the hopes of his friends were revived, and he was enabled to give some trifling attention to such matters of business as seemed impossible to disregard.

In the ensuing October the General Term of the Supreme Court for the eighth district commenced its session at Buffalo. During this term Mr. Barker assisted in arguing two important causes, at the conclusion of which he left the forum forever. Soon after this he was attacked with a lingering fever, which continued, with various phases, until the 27th day of January, 1848, when he expired.

## WILLIAM G. BRYAN.

Characteristics.—Governor Seymour.—Remarks on his Character.—Birthplace.—Parents.—His Early Education.—Apprenticeship to the Printing Business.—Commences the Study of Law.—Obstacles in his Way.—Continues the Study of Law with Judge Taggart.—Admitted to the Bar.—A Partner of General Martindale.—Ogden Land Company Litigation.—Mr. Bryan's Connection with it.—Company Attempts to Remove the Indians from Their Reservation.—Jacob Thompson, Secretary of the Interior.—General Denver.—Caroline Parker, the Educated Indian Girl.—Her Influence in the Controversy.—Mr. Bryan Sustains the Indians.—With Messrs. Martindale and Follett, Visits the President.—Proceedings at Washington.—Mr. Bryan's Connection with the Legal Profession.—His Political Career.—His Character as a Writer.—As Speaker.—His Speech on the Death of Lincoln.—His Speech on Laying the Corner Stone of the New York Institution for the Blind.—Letter of George W. Clinton.—Speech Before the Genesee Agricultural Society.—Lecture on Edmund Burke.—Fennimore Cooper.—Oliver Cromwell.—Mr. Bryan's Marriage.—His Tragic Death.—Funeral Reflections.

EUROPEANS of thought and culture visiting our national capitol express great surprise and disappointment at the absence of eminent ability in our halls of Congress. Neither the Senate chamber, which once resounded with the eloquence of such intellectual giants as Clay, Webster and Calhoun, nor the popular branch of our national Legislature, which in times past was dignified by men of historic reputation, like John Quincy Adams, and John Randolph, of Roanoke, now impress the spectator with any extraordinary respect for the talents and attainments of the men who make the laws and are supposed to govern the destinies of the republic. Neither in statesmanship, nor in

ability as debaters, nor in the graces of scholarship, do those who are at the head of the nation, come up to the generally accepted high position conceded to our country among the principal powers of Christendom. We know better than our visitors how to account for this apparent decadence in our nation. We know that so flagrantly corrupt has become the machinery of party politics, that with rare exceptions the best men, the really ablest men in our land are not now as of old to be found in official positions. Yet, neither in the learned professions, nor in the army, or in the navy, nor in those who adorn the mechanic arts, or in the great mass of our business and industrial classes, do we discover any signs of this falling off in the standard of patriotism, intellectual ability, development and progression which is requisite for our continued national advancement. So distasteful, however, to men of superior ability and character is the odious doctrine, that in politics the end justifies the means, that they prefer the independence of private life to that surrender of their self-respect and even honor that is too often demanded of those who seek political advancement. Too often, alas, much too often, as we read of gross corruption among those in high places, are we reminded of the truth of the old adage, that the post of honor is in a private station.

Conspicuous in the long roll of eminent names that have conferred honor upon the legal profession in Western New York, stands that of the late William G. Bryan, of Batavia. His career, and the prominent traits of his character, strikingly confirm the justice of our preliminary remarks. Deriving no dignity or consequence from official position, he, by his own unaided exertions, achieved a reputation as a lawyer, as an orator, as a scholar and a Christian gentleman, which enrolled him among the most honored and revered in our land. In the lan-



guage of ex-Governor Seymour: "He was earnest, able, and chivalric. He made himself felt in every circle in which he moved. He gathered force and power as he moved on in the pathway of life, and I looked upon him as one who was to hold still more marked positions in our State and nation. God in his wisdom took him away when he seemed most needed by his family and State. We can only bow to His decree, and pray that in His mercy He may shape all this for our good."

Mr. Bryan was the son of William and Mary Bryan, and was born in the City of Brighton, England, on the eighteenth day of January, 1822. His father, who is still living, is a man of rare intellectual faculties, and although he has attained the advanced age of seventy-two years, is still in the vigorous enjoyment of all his mental and physical powers. His mother, who died in 1836, was a woman of very superior intelligence, beauty of person, and grace of manner. She realized the ideal of the poet who wrote:

None knew her but to love her;  
None named her but to praise."

Mr. Bryan's father, believing that there were greater opportunities for the advancement of his children in the United States than in their native land, came to this country with his family in 1830, and after a brief residence in New York and Utica, settled finally in Le Roy, Genesee County, where he embarked in business as a cabinet maker. Appreciating fully the incalculable advantages of education, he afforded to his children the important aids to be derived from the best private schools and academies. Consequently, the early advantages of young Bryan were excellent. They were fully improved, and largely promoted his success in after life. Owing, however, to the financial and general business depression and disasters of 1836

and 1837, his father was unable to continue him any longer at the academy at Le Roy, which he had been attending. And so, with a stout heart and a determination to make his way in the world, at the tender age of fifteen, in 1837, he commenced an apprenticeship to the printing business with D. D. Waites, Esq., then and at present proprietor of *The Republican Advocate*, published at Batavia. It soon became apparent that the profession of the law was the one best suited to his tastes and rapidly developing powers of mind, and he began to shape his studies and reading accordingly. In 1838, at the age of sixteen, he entered the office of Hon. Albert Smith, of Batavia, as a student of law. Never in the days of old, or in the present time, did student enter upon his studies with more enthusiasm, or with a nobler and firmer resolve, or with more hopefulness. His industry was untiring. He allowed no obstacles to discourage him. Teaching a district school by day reading law, history, biography and classical literature in the long, quiet hours of the night, attending lectures, and seeking the society of the learned, refined and pure minded, he soon began to make rapid and encouraging progression. He overcame the want of a collegiate education by his wonderful application, and attained a mastery not only of the English, but of the Latin and French languages. He also obtained a command of eloquence and logic, which ultimately placed him in the front rank of his profession. He entered the office of Hon. Moses Taggart in 1840. The personal kindnesses of the judge so impressed the mind and heart of the youthful aspirant for professional honors, that he became, and continued until his death, one of Judge Taggart's most devoted friends. Quickly and pleasantly glided away Mr. Bryan's student life, and he was admitted to practice when employed in the office of Messrs. Redfield & Pringle, at the land office in Batavia. He retained an interest in the business of

the office from 1847 to 1850, at which time he formed a copartnership with Gen. John H. Martindale, and opened an office under the firm name of Martindale & Bryan. Upon the removal of Gen. Martindale to Rochester, Mr. Bryan, with Hon. Seth Wakeman, established the law firm of Wakeman & Bryan; which partnership, together with the most intimate and cordial relations of friendship, continued until death rudely severed their mutually delightful intercourse.

In the spring of 1851, during Mr. Bryan's professional connection with Gen. Martindale, an exceedingly important litigation was in progress between the Ogden Land Company and the Tonawanda band of Seneca Indians, involving the rights of the Indians to their reservation in the County of Genesee. This reservation comprised twelve thousand eight hundred acres of valuable land. From that time forward, until the final determination of the controversy, Mr. Bryan took an active and important part in the proceedings. In the winter of 1857 one of the actions (that of *Blacksmith v. Fellows*), which had arisen in the controversy, was argued in the Supreme Court of the United States. The Court adjudged that the Ogden Company had no right to enter and settle on the reservation, and could not maintain an action of ejectment to enforce their claims under the treaty with the Indians, but must await the action of the political department of the government, and the actual removal of the Indians by the political power. This decision was announced about the time of the accession of the late President Buchanan to the presidency. Soon after the commencement of his administration, with Hon. Jacob Thompson as Secretary of the Interior, and Gen. Denver as Commissioner of Indian Affairs, the Ogden Land Company applied to these officers to remove the Indians from their reservation. Some years before, during the administration of President Taylor, an attempt had been made to enlist the political de-

partment of the government in measures designed to effect such removal; but those measures were unsuccessful, and the then Secretary of the Interior, Thomas Ewing, had declined to take any steps in aid of the land company. In 1857 their attempt was renewed on the assumed ground that the decision of the Supreme Court had made it the duty of the executive department of the government to interpose and put the company in possession. They were so far successful that Gen. Denver himself went to the reservation, accompanied by a number of the gentlemen who belonged to the land company. Their approach was the first intimation which the Indians and Messrs. Martindale & Bryan had of the new and hostile proceedings contemplated by the government. They immediately repaired to the reservation, and there met the commissioner, Gen. Denver, in a council of the Indians. The interpreter on the occasion was Caroline Parker, an educated Indian girl, and sister of Gen. Ely Parker, the present Commissioner of Indian Affairs. The presiding Chief and Speech-maker of the Indians was William Parker, her father. The proceedings of the Council were intensely interesting. The Indians were alarmed. It seemed as though their long struggle to maintain their hold on the lands where they had been born—which their ancestors had held from time immemorial—which were now claimed under the provisions of a treaty never assented to by a single Tonawanda chief or warrior, as though all their efforts and hopes had been in vain. The Commissioner told them that they must leave; that the Supreme Court had decided against them; and he called on them to declare whether they would go.

The Chief, Parker, replied with composure, that they wished to hear from their counsel before giving him an answer. Therefore, their counsel told them that the decision of the Supreme Court had not been correctly understood by the Commissioner, and that



it was not the duty of the government to remove them. When this declaration was made, the Commissioner said with emphasis that he must have their answer distinctly, would they go or not?

The interpreter, Caroline, who was standing near the counsel of the Indians, spoke hurriedly and apart :

“What shall we do? we cannot go now!”

The counsel replied :

“Caroline, you can but die.”

Immediately she turned, and in a few words addressed the Indians in her native language. It was a scene not to be forgotten. The old Sachem, Parker, rose, without the slightest perturbation, and with perfect dignity and determination (he was a large and handsome man), and said to the Commissioner :

“We will not go.”

Thereupon, after another short address by Caroline, the Indians immediately arose and left the council-house.

After such a termination of the “talk,” of course prompt and judicious action became necessary. And here the energy and peculiar ability of Mr. Bryan were immediately and signally displayed. He knew that the popular heart was in sympathy with the Indians; that justice was on their side; that forcible expulsion would be a hard and repulsive proceeding for the new Democratic administration, of which he had been an earnest and eloquent supporter. At once the newspapers began to give expression to the public feeling. His pen was at work. He procured letters of introduction to the President and Secretary of the Interior, from prominent men of his own party; and when fully prepared, in company with Mr. Martindale, Hon. Frederick Follett, and the Chief, Ely S. Parker, he proceeded to Washington.

An interview was immediately had with the Secretary of the Interior. The Secretary began it with strong impressions that his executive duty required him to

remove the Indians. The discussion was earnest and prolonged during three hours; but it resulted in enlisting the powerful sympathies of the Secretary, and disposed him to co-operate with the Indians in securing by another treaty, the extinction of the claims of the land company. During the whole litigation, it had not been possible for the Indians to controvert the fact, that the land company had acquired the ultimate title to the reservation, which would become absolute whenever in the course of events the Indian occupancy should terminate. The Indians were entitled, when they should remove, to the possession of a large quantity of land in the Indian territory in the southeastern part of Kansas. But they repudiated all claims to this Kansas domain, asserting that they were not virtual parties to the treaty assigning it to them. In these circumstances, the solution considered by the Secretary, was, the resumption of these Kansas lands by the government and the purchase for the Indians, of the title of the land company to the Tonawanda reservation instead. The only danger to be apprehended was, that the land company would refuse to sell, except at exorbitant prices. However, Messrs. Bryan and Martindale were willing to relieve the Secretary from all trouble in that regard, and to assume the difficulties of the negotiation, which they foresaw would be insurmountable, if the executive department of the government, resuming the ground taken by the former Secretary of the Interior, Mr. Ewing, should decline to expel the Indians by force.

The Secretary recommended that an interview be had with the President the following day. By his procurement, an appointment was made by the President to receive the "Tonawanda delegation" at 12 M., and to confer with them thirty minutes. The delegation got ready. Mr. Martindale, with the co-operation of his assistants, prepared a condensed statement of their case. Shortly before twelve, as they supposed; on the next day; they repaired to the White House.

Being ushered into the executive chamber and introduced to the President, he looked at his watch and admonished them that they were five minutes behind the time appointed. Mr. Follett apologized, and placed the delay to the fault of the clock at Willard's Hotel. Mr. Martindale then said that they appreciated the importance of condensing what they had to present, that they had accordingly put their case in writing, and would proceed to read it, making such explanations, as would enable the President immediately to comprehend it.

"That is right, Mr. Martindale; that is the way such business should be done," replied the President.

The reading proceeded; the President became interested, and when it was concluded, he said:

"Gentlemen, tell me what you want?"

The reply was prompt.

"Either let us alone until we have finished our struggle in the courts, or, take the Kansas lands, and give us the government price in money, and we will buy our place."

The President rejoined:

"Why not, Mr. Commissioner" (addressing General Denver, who was present), "why shouldn't we give them the money and cut this Gordian knot?"

After a little hesitation, the Commissioner answered, "I don't know why not."

The delegation were very naturally quite jubilant. The thirty minutes were up. They rose to leave.

"No, no," said the President, "you will please remain," and he went to the door and told the usher that he was engaged.

The president entered heartily—warmly—considerately into the case. A stranger to it up to that time, he comprehended it at once, and by his prompt and judicious action, secured a band of seven hundred men, women and children, who had no claims on him except his sense of justice and compassion, in the possession of their ancient homes. Events, since then,

have had their influence on the estimation in which the character of President Buchanan will be considered; but he will be kindly remembered in that band of Tonawandas—to them, he was the “Good” as well as the “Great Father.” During the interview, one of the counsel of the Indians, having professional engagements away from Washington, proposed to leave the settlement of details to his associates and the Commissioner of Indian affairs.

“No,” interposed the President; “never take a second love until the first one is disposed of.”

This was a pertinent and appreciative illustration for a bachelor like the President. He then added very kindly and truthfully:

“You will never have a more important litigation than this.”

The President then went through with an estimate of the money necessary, in the case; indicated that a treaty should be had to consummate it, and finally dismissed the delegation with the assurance of success.

Messrs. Bryan and Martindale then went to work with renewed zeal. It was necessary to get propositions from the members of the land company to sell out their prospective title, so as to show that a treaty would be operative. This duty occupied their time and thoughts during the summer. They were so far successful that in the following autumn, a treaty was made between the United States and the government by which the Kansas lands were valued at two hundred and fifty-six thousand dollars, and that sum was placed at the disposal of the Indians to secure their reservation. After protracted delays in the Senate, the treaty was at length ratified in the session of 1859, and the negotiations for the purchase of the claims of the company were actively prosecuted. The President and Secretary of the Interior had determined that the price to be paid should not exceed twenty dollars per acre. Many members of the land company were reluctant to accept that price, and prob-



ably never would have accepted it, but for the attitude taken by the government. Finally, the Indians concluded to reduce their reservation to seventy-five thousand acres, and to secure the investment of the portion of two hundred and fifty-six thousand dollars not used in the purchase of lands, so that annuities might be derived from it. The whole scheme was accordingly consummated during the year 1860, and Mr. Bryan and his associates had the satisfaction of meeting the Tonawandas in council and hearing the exultant and descriptive congratulations of one of the chiefs, as he pronounced the Indian idea of a title in fee simple:

“Now we own our lands from the centre of the earth to the heavens.”

The death of Mr. Bryan was a positive loss to the legal profession of the western portion of the State of New York. His age, acquirements and temperament placed him in the front rank of lawyers, while his personal integrity and immovable fidelity to the duties of his professional employment rendered him an invaluable assistant to his clients. Whatever the interests were which were entrusted to him, they were always sure to receive all the faithful, earnest attention they deserved. In fact, the zeal manifested by him in the discharge of his engagements rarely allowed him to stop at that point; for it often induced him to continue and protract his investigation and reflection beyond what was required for the purpose of securing simply a practical conclusion upon the subject which for the time might occupy his attention. He feared to be wrong, and therefore endeavored to fortify his convictions after he had become satisfied that they were right. This perhaps is not an uncommon trait in intelligent, active members of the legal profession, but with him it was of a marked and emphatic nature—so much so as to render him eminently well adapted to care for and protect the important rights that

are necessarily so often committed to the charge of counsel.

While he possessed all the acquirements requisite for the advocate, and all the ability for the clear and forcible presentation of matters of fact, he did not appear in that capacity before a jury without evident indications of diffidence. He did not confidently measure the full extent of the intellectual powers he possessed for the discharge of the duties of the advocate. If he had, the knowledge he never failed to have of his cause, combined with the ease and candor with which his arguments and views were always presented, would have been certain to have secured him very great success in that department of professional practice. This is a failing often found in men of intellect and talent ; and it is unfortunate for the public that it is so, for it permits persons of inferior ability to take the positions and enjoy the advantages for which they are too often not qualified, because those who by their acquirements are fitted for them, lack the boldness and assurance necessary to attain them.

Before the court none of this constitutional timidity was manifested. There he always appeared to feel at ease ; and for that reason his cases were well presented, the points in them clearly stated, and the arguments properly elaborated. He never failed to see and comprehend all there was of the case he had at the time in hand, and was consequently prepared to enforce his own views and promptly answer those maintained by his opponent.

He was an accomplished, affable, and dignified member of the profession, and his early death has left a vacant space which it will be difficult to supply by any one having so general an adaptation to the discharge of all the duties of the position.

Mr. Bryan took a prominent and important part in political affairs. From his very boyhood, he espoused the principles and advocated the measures of the Democratic party. He believed the principles of

American Democracy were the corner stone of our civil and religious freedom. He was thoroughly conversant with the writings and teachings of those grand old chieftains who were equally an honor to their party and the nation. The works and productions of the fathers of Democracy, Jefferson, Madison, and Monroe, of the illustrious Thomas Hart Benton, of Missouri, of Silas Wright and Martin Van Buren, were as familiar to him as household words. He threw his whole energies into the advocacy of his political principles. He was a most effective campaigner. He was as true as steel, whether fortune frowned or smiled upon the party. Whether the Democratic banner trailed in the dust as in 1840, 1848, 1860, and 1864, or when the Democracy carried the presidential elections in 1844, in 1852, and 1856, he was equally zealous, uncompromising, and reliable in the support of what he regarded as the true principles upon which the government of the country should be administered. His voice was heard trumpet-tongued, cheering on the Democratic hosts at mass meetings in towns and in cities, and the productions of his pen animated the Democratic columns through the newspapers of the party in various portions of the State. He was at the urgent request of his Democratic friends once a candidate for the Assembly, and just before his death, in 1867, he respectfully declined the nomination unanimously tendered him by the Democratic Senatorial Convention for the twenty-ninth district, composed of the Counties of Niagara, Orleans, and Genesee. He was over and over again a delegate to State conventions, several times to national conventions, and in those positions he invariably exhibited ability, tact, and zeal. His manly and effective oratory, matured judgment, ever genial manner and spotless character, combined to make him a power in the Democratic ranks, and he shared in the councils of those who like Horatio Seymour, Dean Richmond, Edwin Crosswell, Heman J. Redfield and Sandford E.

Church, were its acknowledged leaders. Had he not loved honor and principle more than personal aggrandizement or office—had he been a time-server or trimmer, he could, by turning recreant to his political principles, largely have advanced his pecuniary interests, and obtained in addition the so-much-coveted dignities and emoluments of office. But he cared not that Genesee County, and indeed nearly the entire western portion of the State, were politically strongly antagonistic to his party. The guiding star of his life was principle, and neither as a lawyer nor as a politician, nor as a citizen, did he ever swerve from it. Such men give character to a party. Such men attract their fellow men to its standard. Such men make a party strong in the right. Fortunate would it be for both parties and the country if we had more like him.

As a writer, Mr. Bryan was able, vigorous, painstaking, and as occasions demanded and presented themselves, elegant and brilliant. The columns of the principal daily papers in the State as well as the local papers in Genesee and the adjoining counties were through a long series of years enriched by contributions from his pen. How versatile were his gifts. How much of research and investigation his articles exhibited. What an affluence of diction was at his command! What a wealth of language! How he threw his whole soul, as it were into the advancement of all measures and improvements calculated to promote the general welfare. How invaluable he was to the public interests of his section of the State. How often was his charming eloquence heard in the halls of justice, in the lecture room, before county agricultural societies, on patriotic occasions and at public festivities. Now eulogizing the illustrious departed—then again encouraging the living. What a bright, what a hopeful spirit was his. How rare were his conversational powers. How he interested, charmed, instructed. How brilliant were his sallies of wit and humor. How he loved the beautiful in art.



How he attracted one towards him by his unaffected dignity and true manhood. How nobly he strove to make the world better for his existence. He scorned those who crook the pregnant hinges of the knee that thrift may follow fawning. What a host in aid of himself. How self-sufficient.

It is not consistent with the limits of this memorial that we should publish Mr. Bryan's speeches in full, or even give extracts from any great portion of them. Many of them were models of eloquence, and classic in their style. He was always up to the requirements of the occasion. Whether before a court, or addressing an enthusiastic political meeting, or lecturing in the presence of select and discriminating audiences on literary subjects, he was equally happy. We cannot refrain from recalling to mind a few prominent illustrations of his oratorical power. When the whole country was in mourning by reason of the fiendish assassination of the patriotic and revered President, Abraham Lincoln, public meetings were everywhere held to give expression to the sense of the people upon the awful national calamity. One was held at Batavia, and Mr. Bryan was invited to deliver the address. Few who heard him on that occasion will forget the effort or the orator. From the plaintive opening of the address with "My sorrowing fellow-citizens," to the impressively eloquent close, he was listened to with the most profound interest and unwearied attention. Mr. Bryan, in a masterly manner, portrayed the enormity of the crime of the assassin. The foul murder of our beloved Chief Magistrate was a blow aimed at the sovereignty of the people, who had chosen him at the ballot-box. It was the darkest day in our history as a nation, when its constitutional head was brutally murdered by the pistol-shot of Booth. The speaker alike charmed and soothed all present by the exceeding appropriateness of his language and the kindness and sincerity of the feeling he exhibited. In discussing the character and public

acts of the martyred President, he displayed so much magnanimity, delicacy and independence of criticism, that he won the admiration and approval of men of all political parties.

Upon the important occasion of laying the cornerstone of the New York State Institution for the Blind at Batavia, on the 6th day of September, 1866, Mr. Bryan was selected as one of the orators. He had been especially active and instrumental in effecting the location of the institution at Batavia; and subsequently he materially promoted the progress of the noble charity. The address is such a fine specimen of condensed eloquence, that we give it entire:

“Fellow-citizens:—You are this day to witness an interesting ceremony. Our great State has decreed that an edifice of her own shall rise upon this fair eminence, consecrated to the instruction and care of the blind. Its name, ‘THE NEW YORK STATE INSTITUTION FOR THE BLIND,’ declares that it is to be the child of the State, and the faith and honor of the State are pledged to its completion and support. Genesee may be proud that its beautiful county seat was designated as its site, and that her sons presented to the State these ample grounds. One sad recollection only obtrudes. The eminent citizen, who was foremost and largest in his offering to this and so many other beneficent objects, was not spared to rejoice with us to-day.

“We come to add another to the roll of the great charitable institutions of the world. We come in that spirit which is ‘thrice blessed,’ to lay the foundation of a structure to relieve and soothe the smitten and afflicted—not in the interest of war, or cruelty, or violence, but swayed by the high and advancing civilization of the nineteenth century—for *mercy* ‘hath now her victories not less renowned than war.’ New York commanded this structure to come forth. May its walls ascend in strength and grace; may it rank with the first and best in any land, and may its career be

long and glorious! Thus hopeful and trusting, let us listen to the voice of prayer and the word of God."

The Honorable George W. Clinton, of Buffalo, in a letter addressed to a member of Mr. Bryan's family, thus beautifully alludes to the literary power and tastes of the subject of this memoir:

"Mr. Bryan's addresses were permeated by that goodness which exalts mediocrity, and without which genius is baleful. He was emphatically an honest man, and worshiped truth and the Author of all Truth in the humble, loving spirit of Christianity. In his literary and historical productions he exhibited nice discrimination of character, a power of meting exact justice and more laborious research than could reasonably have been expected from one having so many demands upon his time. His style was a model of clearness, with all due polish, and was ornate, without excess.

"From what I have seen of his written efforts, they prove that with an undivided devotion to literature he would have become eminent."

Can anything be more chaste and graphic than the following peroration of an address delivered by Mr. B. several years ago, before a county agricultural fair in "old Genesee?"

"The pale denizens of city and village, tiring of life on the pavements, are clamorous for more room, and bits of pasture, and fresher air, and hence purchase and improve farms or lots formerly considered outside of and beyond any financial market, and all proper village limits. The extreme outer lots are now prized as most eligible and valuable. If such is the tendency *now*, how accelerated will be the movement towards the farm—country-ward—when each highway is dotted with the most beautiful of our native shade trees—when the last ugly patch of bushes and weeds has vanished from the fields—and even clumps of forest or woodland are trimmed and cleaned and underbrushed—like so many picnic groves—when far-

mers' gardens and flower plots shall broaden and beautify—and over the farmer's porch the ivy, or woodbine, or honeysuckle shall creep and twine, and fountains shall spout in the farmer's door yard.

“I am not mad, Mr. President, in venturing the prediction that in the perfection of agricultural tillage—in able and artistic management and rotation of crops, in the wealth of orchards and nurseries, and in the number and quality of live stock, ‘Old Genesee’—less than a quarter of a century onward, will not be eclipsed by the landscape gardeners of Belgium, or even by the rich and indomitable farmers and cattle breeders of England herself.

“Those will be halcyon days for the true farmers of Genesee—her soil a garden—its tillers noble by nature's own heraldry—her daughters ladies even in their own might and right—and all her sons, industrial or professional, from office and shop and forge—prospered and blessed in the bounty and richness of her agricultural products and the success of a farmer's life.

“In ancient times the sacred plow employed  
The kings and awful fathers of mankind,  
And some, with whom compared your insect tribes  
Are but the beings of a summer day,  
Have held the scale of empire, ruled the storm  
Of mighty war, then, with unwearied hand,  
Disdaining little delicacies, seized  
The plow, and greatly independent lived.’”

Perhaps the most classical as well as the most successful of Mr. Bryan's many written literary performances, was the lecture which he pronounced upon Edmund Burke. From the exordium to the close, it fairly sparkled with gems. We quote a few sentences: “The reign of George III. presents some of the most striking features in English history. Stretching through a period of fifty-nine years, it gave to the world a series of public men the most brilliant and extraordinary; and it closed, leaving the British em-



pire in the full march of grandeur and prosperity. In the midst of the conquests and convulsions which desolated Europe, no invader had polluted her soil, no danger had shaken her institutions. The armies of France, led by the greatest captain of the age, had been vanquished—her colonies captured—her fleets driven from the ocean. The eyes of the intelligent and stubborn old king, darkened alike by the infirmities of age and the mists of disease, were closed by the fourth Guelph, in 1820, and his remains borne to the royal vaults at Windsor.”

“Industrious to a proverb—frugal to a farthing—irreproachable in private life—versed in the detail of politics beyond any ruler of his day; devoted to the wants of his people—but unflinching in his adherence to prerogative, he outlived all the greater lights which had revolved about his throne. Prominent among the illustrious men of that period stood Edmund Burke.”

. . . . “I have in my mind the grand form of an American statesman now deceased, whose political opinions I did not fully share, but whose great powers none could more ardently admire, who stands towards this generation like Burke and Bolingbroke towards the last—as a man of *full* mind whose *words* were *thoughts*—and who, with prodigious resources of idea and language, combined like them the marvel and the miracle of speaking and writing well—whose grave and pungent sentences are destined to the reverence of future ages. There are many points of resemblance between the statesman of Marshfield and the statesman of Beaconsfield. . . . It was the friend of their latter days—the orator, the dramatist, and the minstrel Sheridan—who said of Mr. Burke, ‘To whom I look up with homage, whose genius is commensurate to his philanthropy, whose memory will stretch itself beyond the bounds of any little temporary shuffling through the whole range of human knowledge and of honorable aspirations after human good, as large as the system which forms life, as lasting as those objects

which adorn it. A gentleman, whose abilities, happily for the glory of the age in which we live, are not intrusted to the perishable eloquence of the day, but will live to be the admiration of that hour when all of us shall be mute, and most of us forgotten.’”

His appreciation of the writings and style of the illustrious literary men of our day and generation, may be inferred from the following extracts from the lecture which Mr. Bryan delivered before the Batavia Lyceum, on the fourth of January, 1860.

“In the loss of statesmen and orators following each other in the dread path, in rapid succession, the country has mourned its Calhoun and Clay and Webster—a matchless trio—who had become as it were so many powers in the State, self-existent, self-sustaining, and independent of the caprices of political fancy. They expired when their intellects were still in full vigor and their forces still waxing stronger—they all met death with the robes of office about them, and with official duties still undischarged. On the fifth day of September, 1851, at his residence in Cooperstown, near the banks of that beautiful lake and amidst scenery which his pen has so vividly illustrated, yet in the prime of advanced manhood, with faculties unimpaired, and with the strongest assurances of comfort from faith in that religion which he had believed and practiced from infancy—died the great American novelist, James Fennimore Cooper. One of the most brilliant and original of our literary lights was extinguished by the inevitable messenger, and he who had so often depicted with thrilling accuracy the last hours of the soldier and civilian—the flight of the spirit into the unknown world, from camp or wilderness, or war-path amid the tiger strife of battle, was himself introduced into its awful precincts. . . .

“He founded two new schools of literature, and made them exclusively his own. He was among the first who enabled us, in reply to the question, who reads an American book, to answer—‘the world.’ He has

illustrated with matchless energy and beauty, all that is sublime and interesting in the scenery of his country. He has exalted the position of that country among reading and thinking classes of every country. On the Rhine, the Volga, the Ganges, at Ispahan, wherever a book stall can be reached, he is the companion of prince and of peasant, and the fire of his blazing imagery loses but little force in translation. While others imitated in tame mediocrity the leading writers of the old world, he invented a style and subjects of his own. While others copied, he produced originals. While others were content with an approach to the European standard, like a true American, he sought to make a higher standard for himself. Where even the name of Washington is scarcely known, the fame of the great American novelist has extended, and in climes where the speeches of our statesmen are never read, the beauties of Cooper are as household words. . . . .

“Sir:—His works will bloom in perennial beauty when the colors of the painter shall have faded and the arch of the sculptor be broken. The efforts of true genius are immortal and cannot but by annihilating die.”

How much thought, how much grandeur of expression, are contained in the above sentences! What a pure, what an ennobling imagination was his! In a lecture upon Oliver Cromwell, Mr. Bryan displayed extraordinary descriptive power, as is exhibited by the following extract:

“Wherever the English language is spoken or the English common law adopted, the name of Chief Justice Hale is a synonym for whatever is sagacious in legal judgment or unpurchasable in judicial integrity. Milton was the Latin or Foreign Secretary of Cromwell, and the fast friend of his administration. That administration he defended in a series of papers of transcendent ability and elegance. He conducted several of its negotiations, and wrote some of its most

finished correspondence. Not even in his *Paradise Lost* does he stand upon a pedestal of higher or more unapproachable excellence than in those voluminous essays in defense of civil and religious liberty and the freedom of the press. His stately pen, that never, never for a moment laid aside its costly lore or its austere majesty, was frequently employed by the Parliament to answer and to silence the attacks of its unrelenting and accomplished opponents. The best and finest parts of each contending faction seemed to be embodied in his life and opinions. Now, and centuries hence, his name will never be mentioned by the scholar or the student without emotions of the most wonderful admiration and the most profound reverence. Before his brilliant fancy were unveiled spirits too bright for earth. Angels clad in celestial armor and the sapphire fount; the crystal walls; brooks that rolled on orient pearl; Hesperian fruit; flowers worthy of Paradise; stones of costliest emblem. To his ear intent were wafted the chorus of the cherubim and the sounds of their golden harps."

Mr. Bryan was married on the 24th of February, 1848, to Miss Ruth Beardsley, daughter of Dr. Theodore Beardsley, of York, Livingston County. This union was of unalloyed happiness, and their home at Batavia has ever been the seat of refinement and hospitality. Mrs. Bryan, who survives her beloved partner in life, is a lady whose accomplishments and attainments, as illustrated for upwards of twenty years, have won for the educational institution of which she is principal, a reputation second to none in the State. One child only, a daughter of seventeen, survives her father. One brother, Mr. George J. Bryan, now and for many years editorially connected with the daily press of Buffalo, and Mr. Bryan's father, are all that the ravages of time have spared of a family of eight persons.

But this honorable and useful career was soon to close. On the 25th day of October, 1867, at Burling-



ton, Iowa, near a thousand miles away from his home—far away from his devoted and sorrow-stricken wife and beloved daughter—far away from the scene of his labors and triumphs in life's battle—far away, too, from the hills and valleys of old Genesee—despite the untiring and heroic efforts to avert his inevitable fate, which were put forth by those who cared for him, and watched his last moments, William G. Bryan's spirit ascended to the God who gave it.

It appears that Mr. Bryan, then on a visit to Mr. and Mrs. Carper, at Burlington, Iowa, was taking a ride in a buggy with Mrs. Carper, and when in the vicinity of Olmstead's Mills, near that city, they halted for a passing train of cars. On starting up the horse, Mr. Bryan accidentally dropped one of the lines, and was in the act of reaching over the dash to recover it, when the animal made a sudden start, throwing Mr. Bryan with great violence across the buggy, striking the back of his neck on the wheel; he still clutching the line, the horse was drawn round, upsetting the vehicle and throwing them both out. Those who witnessed the accident state that the first fall was the fatal one, as he was evidently insensible after that. The physicians are of the opinion that the spinal cord was so injured as to paralyze the brain, causing immediate insensibility, from which he never recovered.

The feeling of regret inspired by his untimely decease was universal. It was not confined to formal notices from courts, nor to eulogies from his professional brethren, who felt that one eminent in their ranks had fallen. The merchant in his counting house, the mechanic in his shop, the laborer leaning over his hod, and the sturdy yeomanry in their quiet homes, heard the announcement with heartfelt sorrow. A committee, exceptionally large in numbers, composed of the representative men of Genesee County, proceeded to Buffalo, where they met the remains of their late beloved friend and escorted them to that home at Batavia, which but a few days before he had

left in the full vigor of his noble faculties. Too full for utterance were the hearts of those friends of his boyhood and of his maturer years, as they marched silently and respectfully behind the now inanimate form of one, who when living, was so near and dear to them.

The honors paid to the memory of Mr. Bryan were of the most impressive character. The members of the bar of Genesee County, the citizens of Batavia, without distinction of party, and vestry of St. James' (Episcopal) Church of Batavia, in which Mr. Bryan was an honored associate met in due time, and gave expression in touching and appropriate language to their profound sense of the great and almost irreparable loss, not only to Genesee County, but the State had sustained. Many daily and weekly papers in western New York contained glowing and heartfelt eulogies of deceased. *The Batavia Spirit of the Times* came out with all the inside columns draped in mourning, a tribute, so far as our knowledge extends, never before paid to a private citizen.

The funeral of Mr. Bryan took place on Thursday, October 31, 1867. The services were held at St. James' (Episcopal) Church, and a very large concourse of the inhabitants of Batavia and vicinity, as well as from the neighboring cities and villages, assembled to pay the last tribute of respect to the honored dead. The merchants closed their stores, and business generally was suspended in town. The services were conducted by the Rev. M. Fowler, the Pastor of the Church, and were listened to with the most profound attention. The remains were then conveyed to the cemetery; being followed to their final resting place by a long line of mourning friends. Never was more heartfelt sorrow more unaffectedly and impressively demonstrated.

Such accumulated testimonials of respect encourage us. They assure us that the popular heart is sound to the core. They convince us that true worth

and character and real ability are appreciated, even in days when there is so much counterfeit, so much pretension, so much of the unreal. We cannot but deeply deplore the loss of one who led so blameless a life, and accomplished so much in comparatively a short time. What a brilliant future was in store for him! Verily, there is a "Divinity that shapes our ends, rough hew them as we will." In his almost tragically sudden demise, we are again impressed with the truth and sublimity of that ever memorable utterance of one of Britain's noblest orators (and one which Mr. Bryan. dearly loved to quote), "What shadows we are, and what shadows we pursue!"

## JAMES MULLETT.

Birthplace.—Poverty of his Parents.—Apprenticed to a Carpenter and Wheelwright.—Anecdote.—Frames a Building on a New Theory.—Success.—Scene at the Raising.—Becomes a Clerk in a Store.—Anecdote.—Tries a Lawsuit.—His Success.—Commences the Study of Law.—Judge Houghton.—Admission to the Bar.—His Professional Career.—Eminent for his Eloquence.—Politics.—Elected to the Assembly.—Distinguished in that Body.—Appointed District-Attorney.—Declines a Re-appointment.—Great Defense of Damon.—Defense of the Indian Woman.—Touching Incident.—Other Trials.—The Chautauque Bar.—His Personal Appearance.—Removes to Buffalo—Professional Success.—Elected a Justice of the Supreme Court.—Death.—Character as a Lawyer.

WITH the Constitution of 1846, a new judiciary system was adopted, which provided for the election of justices of the Supreme Court and judges of the Court of Appeals by the people. So far as the courts and the judiciary were concerned, old things passed away, and all things became new. Like all innovations in government, these changes were looked upon with distrust by some, and with alarm by others. But as the American people submit to the laws with a sort of instinct, all prepared to test the provisions of the new Constitution, without a murmur. Early in June, 1847, an election was held for choice of judicial officers for the eight judicial districts, into which the State had been divided.

Among the judges chosen at that election was James Mullett, then a resident of Buffalo, New York, for many years a distinguished member of the Chautauque bar, residing at Fredonia. There, a poor and unfriended boy, he became the artificer of his own



fortunes, and by industry, economy, studious habits and self-cultivation, arose to eminence and distinction in a profession crowded with ambitious aspirants for preferment.

Like very many who have occupied a distinguished position at the bar of the State, Mr. Mullett was a native of Vermont. He was born at Whittingham, in that State, October 17th, 1784. He was the eldest of thirteen children. His father was, by occupation, a tailor—a man possessing a bright, active mind and considerable information, but entirely wanting in the means to liberally educate his children; and James, who inherited all of his father's intelligence, with the addition of much enterprise and great love of knowledge, was compelled to struggle with adversity for the information which he obtained. Almost with the beginning of the present century, the father of young Mullett removed from Vermont to Darien, in the County of Genesee, New York.

As soon as James was old enough to labor, he was apprenticed to a joiner and millwright. His natural ingenuity soon began to exhibit itself in his new calling. The progress which he made is described by one of his biographers, in the following anecdote:

“His *boss*, who was about constructing a saw-mill by the slow process known as the scribe rule, commenced fitting each tenon to its appropriate mortise, and by cutting and trying after the style of those days, proposed in time to complete the mill. James saw the disadvantages and necessary delays of this style of mechanics, and proposed himself to lay out and put up the frame by a rule which he supposed more expeditious and quite as correct. He did it; and as the day for raising was appointed, the neighbors came in to assist, and witness his success, or, what was more probable, his failure. But, instead of a failure, it was a perfect triumph. Not a mortise or joint was wrong—not a brace, or sill, or girt, or rafter was missing, but, fitting in every part, it stood as the

witness of his mechanical genius ; and so great was the gratification of the people present, that they took him up and carried him about in triumph upon their shoulders.”

It was this early-developed mechanical genius, which, in after life, rendered him so successful in trying those cases where mechanical principles were involved. As a proof of this, it is related that on one occasion Mr. Mullett was retained in an action brought against a millwright in Cattaraugus County, to recover heavy damages for not erecting a mill in a skillful and workmanlike manner. The defendant prepared a strong and ingenious defense, in which he attempted to show that the plaintiff did not understand the operation of two large wheels which he had made. This defense was based entirely on principles of mechanics. It was devised and planned by one of the most skillful wheelwrights in the country ; and, as the errors of the theory, if any, could be detected only by a competent workman, the defendant was sure of success ; for, although he was well aware of Mr. Mullett's great ability as a lawyer, he did not dream that he was skilled in the art and mystery of building wheels. But when Mullett came to the cross-examination of the witnesses, all in the court-room were astonished at his knowledge and skill as a mechanic. The master-builder, who had planned the defense, on his cross-examination, was caught in the meshes of that “thumbscrew of the law,” and completely failed in attempting to sustain his idea of the case. There was not a principle in quantity, measure, motion, balance, and relative position, that Mullett did not understand, so that the practiced mechanics, who came to testify against the plaintiff, found in the lawyer opposed to them a mechanic vastly superior to themselves. It is proper to add, that the plaintiff recovered a verdict for his claim against the defendant.

Mr. Mullett continued with his employer two years, working diligently, and acquiring a knowledge of the

business quite beyond his years. While thus engaged, he made the acquaintance of a Mr. Lovejoy, of the firm of Lovejoy & Hale, a respectable mercantile firm at Fredonia, New York. Mr. Lovejoy soon ascertained the many excellent qualifications of young Mullett. To his surprise, he learned that he was an excellent accountant; and, being in want of a clerk, invited the young man to enter his store in that capacity. The invitation was accepted, and in August, 1810, he became a clerk for Lovejoy & Hale, and a resident of Fredonia. While thus engaged, his employers brought an action against a man for necessaries furnished his son, an infant under the age of twenty-one years, to wit, of the age of nineteen years; to use the language of legal forms. The claim was resisted, on the ground that they were delivered to an infant. On the day of trial, the plaintiffs' attorney disappointed them; and when the cause was called, the defendant appeared with a practiced and skillful lawyer; but the plaintiffs had no counsel. What was to be done? At the moment when they were on the point of withdrawing their suit, young Mullett entered the office, and, to their surprise, proposed to try the case for them. Mr. Hale took him into an unoccupied room; when they were alone, he said:

"Why, James, do you know anything at all about law?"

"Yes, something," was the reply.

"When did you have an opportunity to learn law?"

"When other people were amusing themselves, or were in bed and asleep, I read several law books," said Mullett.

"Can you try this suit against that lawyer? he's very abusive sometimes to the opposite lawyer," said Hale.

"I'll take care of that. Come, it's time to proceed. Shall I attempt to try the suit for you or not?" said James.

"Go ahead and do your best," was the reply.

Accordingly, they returned to the court room. A jury had been impaneled, and all things were ready to proceed.

“Who tries this cause for the plaintiffs?” asked the defendant’s lawyer.

“I do,” said Mullett, coming forward and seating himself at the table.

“What, are you going to try it? Where is your mallet and chisels? or are we to be hacked with broad-axes here by this fellow?” asked the lawyer in a sneering manner.

“No, sir; I shall hack you with something which you know less of than you do broadaxes and chisels,” was the reply.

“And pray, Mr. Thingum, what is that?” asked the lawyer.

“Good, plain, common sense,” said James.

The roar of laughter which followed this keen reply, showed how well the cut was enjoyed by the audience; while the lawyer bit his lips.

The trial proceeded. Mr. Mullett proved the delivery of the articles—that they were delivered to the son of the defendant—their value—the condition of the defendant as to property, and that the son was under twenty-one years of age, with the precision and skill of an old lawyer. The attorney opposed, used every means in his power to embarrass the young man. Every captious objection which he could conjecture was used, but in vain; the head that could plan with so much skill and success, a new method of erecting the frame of a building, had resources sufficient to manage this cause. When the evidence was closed, the defendant’s counsel insisted upon “summing up” the case, believing of course, that he would have an immense advantage over his “green antagonist” in that part of the contest.

“Don’t have it summed up if you can help it,” said Hale; “he’ll beat you at that.”

“Let us submit the case without summing up,” said Mullett.



“No, sir; I shall sum it up, and you can do as you like,” said the lawyer.

“Very well,” said Mullett; “so I suppose you must commence.”

When the counsel had concluded what he believed to be an overwhelming speech, the young clerk proceeded to address the jury, and, though his argument was not entirely according to forensic rules, it was strong, able, and characterized by common sense, and fortified sufficiently by law to render it conclusive. All in the room listened with astonishment at his ready flow of language, and if his friends were delighted with the consummate skill in which he framed the saw-mill, their delight was increased, when they listened to his first forensic effort, while the lawyer opposed, found that he had come in contact with no common mind. The jury returned a verdict for the plaintiffs.

This incident determined the future career of James Mullett, and paved the way for his entrance into that profession which he so signally adorned. He was now strongly urged by his friends to adopt the legal profession; and he acceded to their wishes. But prevented by “chill penury” from availing himself of those means of obtaining a legal education, which more fortunate young men possessed, he continued his clerkship with Lovejoy & Hale, devoting every leisure moment to his legal studies. When the business of the day was over, and upon occasions when others were “seizing fancied pleasures as they flew,” he wrestled with, and mastered those elemental principles, which laid the foundation of his excellent legal education. After continuing his studies in this manner several months, he entered the office of the late Jacob Houghton, of Fredonia, as a student at law. Mr. Houghton was one of the most respectable and able members of the Chautauque bar, a judge of unblemished purity, and a citizen whose excellent qualities rendered him a valuable member of society.

Elijah Risely, Esq., was also a student in the office of Judge Houghton, with Mr. Mullett.

Like many other young men of limited means, Mr. Mullett was compelled to support himself, during his studentship, by teaching.

The benefits which are derived from a few years' experience as a teacher, are of great value to a young man preparing for any profession, especially that of the law. It gives the mind a peculiar discipline—the great art of self-government, and the government of others, is thus learned. But it requires a peculiar energy of thought and expression. The teacher should look with reverence upon every human soul committed to his care; and as Canova or Fiesole saw in the unhewn marble, the majesty, grace, beauty, and emotion which commands the admiration of ages, so the teacher should see in the undeveloped mind of his pupils, the great, the gifted, the good of coming years, and thus labor to quicken the young mind to a consciousness of its inward lofty nature, its capacity for progress, its affinity for all that is beautiful and elevated. With these views, who can be surprised, that so many statesmen, jurists, divines, and gifted men in all the avocations of life have once been teachers?

Mr. Mullett felt the responsibilities and appreciated the benefits of his position as a teacher, and amid the active scenes of his life, reaped the reward of duties well done in that profession.

Thus, dividing his time between the school-room and his legal studies, occasionally conducting suits before the justices of the peace in the vicinity, he was at length qualified for his admission to the Chautauque Common Pleas, and he was admitted to that court on the 2nd day of November, 1814. From that time he abandoned the school-room and devoted his attention to his profession. His practice was confined to the business of that court for two years, when, in June, 1816, he was admitted to the Supreme Court; and in due time he was admitted a solicitor in chancery and

a counselor of the Supreme Court and in chancery. After his admission to the bar, his struggle with poverty ended. He entered laboriously into the practice of his profession, and it brought the sure reward of industry and ability. At first, the older members of the profession occupied the circle to which his ambition aimed, but he rapidly approached that position, where he was accorded the honors so long reaped by others.

At the period when he was called to the bar, political excitement in the State ran high. The war with England had closed. Amid the rejoicings which followed the victory of New Orleans, Daniel D. Tompkins, by the pleasing and attractive features of his character, his elegant address, his energy in aiding the government in the prosecution of the war, rendered himself the favorite of the people, and in 1816, he was elected, for the fourth time, Governor of the State. Then came the singular political era, which followed the accession of De Witt Clinton to the gubernatorial chair of the State—the fierce partizan contest of the Clintonians and Bucktails. In this contest James Mullett engaged with all the energy of his active mind. His great friendship for Mr. Tompkins caused him to conceive a dislike to Governor Clinton, and he became an active, prominent member of the Bucktail party in the County of Chautauque. With his pen, with his eloquence in the popular assembly and everywhere, he encouraged, enlivened and led on the Bucktail partizans, and that party soon became dominant in his county.

For several years Mr. Mullett was a law partner of the late John Crane, of Fredonia. This relation continued until the autumn of 1822, when the former was nominated by the Bucktail party of Chautauque County for member of Assembly. After a closely contested election, Mr. Mullett succeeded. That year the contest for governor, between Joseph C. Yates and Solomon Southwick occurred, in which Judge Yates

was elected. Mr. Mullett entered the Legislature January, 1823. He at once became one of the leaders of his party in the Assembly. Peter R. Livingston, of Dutchess County, was elected speaker. He was one of the most bitter opponents of the Clintonians in the State, and the strong vote by which he was elected exhibited his great power.

Mr. Clinton's course in the Constitutional Convention of 1821 rendered him, for the time being, unpopular. Indeed, as it then appeared, his enemies had completely triumphed, and his political career ended. But whatever his opponents expected from the result of this election, they were destined to disappointment. Like the first Napoleon's return from Elbe, after disasters which appeared overwhelming, so Mr. Clinton emerged from this defeat to a brighter position than he had ever occupied before the people of the State of New York.

The ability of Mr. Mullett as a legislator is fully evinced by his position upon several important committees, by the speeches which he delivered, and the important documents which still survive him.

He was a harsh, bitter, and uncompromising opponent, often pushing his political prejudices to extremities; but as that course was in strict accordance with party discipline, he could hardly fail to pursue "the regulation."

In doing so, he did not escape the denunciation of his political opponents, who often charged him with all the political evils and enormities of which man is capable.

As has been well said by another, "To be a member of the Assembly, and a leading member, at a time when men were elected in reference to their qualifications and capacity, was a distinction very much to be desired."

During the session of this Legislature, an attempt was made to procure the passage of a law authorizing the election of presidential electors by the people, in-



stead of their appointment by the Legislature. It was a measure very popular with the people, and they were clamorous for the passage of such a law. In the House a committee of nine was appointed, with Mr. Flagg as chairman, to report a bill favorable to the wishes of the people on the electoral question. Mr. Mullett was a member of that committee. After much discussion, a bill was reported, "giving the power of choosing electors to the people, but requiring that the persons elected should have a majority of all the votes." An attempt was made to alter this bill, so that a plurality of votes should elect. This failed, and the bill passed the House as reported by the committee.

This was the year when the great presidential contest between Adams, Clay, Crawford, and Jackson occurred. As neither party could elect, it was charged that the committee desired to do only enough to satisfy the demands of the people, and silence their clamor without effecting the object desired. It was claimed by the opponents of Mr. Mullett, that he sympathized in this feeling, and he shared the censure of the people with all those who supported the bill as it passed. His friends have found sufficient apology for this act, by urging the fact that the measure was a political manœuvre, sprung for effect at a time when the change was not demanded, only to advance the interest of one of the presidential candidates, to the prejudice of the others. At any rate, he voted in accordance with the dictates of his own conscience, regardless of other considerations; in that, he discharged the highest duties of a legislator.

Silas Wright was then in the Senate, where the electoral question was discussed amid all the heat of partizan strife. His vote in the Senate was very similar to that of Mr. Mullett, in the House.

The latter, after serving two terms in the Legislature, retired to private life, and never again held a public office, until, at the judicial election in 1847,

he was elected a justice of the Supreme Court for the eighth judicial district of the State.

He was not constituted for a politician ; he did not possess that flexibility of mind which enables a man to pander with success to bar-room politicians, village wire-pullers, managers of caucuses, and conventions, who are the engineers of our political machinery—the running-gears of parties. Plain, direct, honest, and sincere, he could move with power and impressive force in the debate—in the committee—and in the arena of eloquent argumentation. But in the field where political legerdemain is the order of the day, he was out of his sphere—and weak. Returning from his legislative life, to the bar, he rose to an eminence in his profession which soon placed him in its front rank.

While Mr. Mullett was regarded as learned in elemental law, familiar with the statutes, and with precedent, he particularly excelled as an advocate. Perhaps few men who have been at the bar in this State, were more accomplished as jury lawyers than he. He possessed a peculiar force which rendered him an attractive speaker. The manner in which he entered into his client's case impressed both court and jury with the belief in his sincerity ; while he had a vigorous, discursive imagination, and a mastery of language which few possessed. It was his fortune to be engaged in many of the great trials which occurred in western New York, during the period of his practice. His defense of Joseph Damon, tried for the murder of his wife, at Mayville, in September, 1834, was remarkable for the ingenuity and ability with which he turned the circumstances relied on by the prosecution for a conviction, into facts, establishing, as he contended, the prisoner's innocence. His address to the jury, in that case, attested that high order of intellect, that unwearied research, that unsurpassed eloquence, which placed it on an equality with the ablest forensic effort

ever made in the State. He interposed the unpopular defense of insanity for the prisoner. As has been well said by an able commentator on medical jurisprudence: "One reason of the reluctance with which courts of law entertain the plea of insanity in a criminal prosecution, is undoubtedly some apprehension lest it should prove to be feigned. And yet it is a disease which is not easily feigned. For all the different forms of insanity have their own peculiar characteristics, which are known and easily recognized by the experienced observer."

Still it is sometimes counterfeited when the physician is not well skilled in the symptoms of "a mind diseased."

Dr. Chayne gives an account of a person who could not only counterfeit insanity, but death itself, better than Falstaff. So successful was this person in his deception, that one day, he actually convinced, not only the doctor himself, but several other physicians that he was actually dead; animation was so completely suspended, that, after feeling his pulse and holding a mirror to his mouth, they were on the point of leaving him to the undertaker, when one of the number discovered returning life.

The most singular case was that of William Newman, who, in 1814, was confined in jail at New Brunswick, for murder. He admirably counterfeited a quick consumption, through all its stages of raising blood, and progressive debility, deceiving all the doctors in the neighborhood. He was thrown into jail on the second of August, but it was not until the twenty-second of September, that his dissolution was threatened. The jailor entered his cell—found him dying—already cold to his knees. The dying man begged for a hot brick to warm them, and while his keeper went out to get one for him, he leaped out of bed, escaped from prison and eluded the vigilance of his pursuers. These, however, are extreme cases. The experienced observer is seldom deceived.

The plea of insanity is, therefore, a humane defense, having a just regard for all the imperfections of our nature. The slight tenure by which we hold our reason, the ease with which our intellect is unbalanced, the fact that all our nicely-arranged faculties may be in perfect harmony and order save one—admonish us to look carefully at the defense—to listen to it with patience and judgment.

In the defense of Damon, Mr. Mullett showed deep research into the phenomena of the mind—all its remote and divergent aspects—all those mental diseases which glide into various degrees of cerebral disorganization or total insanity.

The mother of Damon appeared in court and testified to his insanity. Mr. Mullett's reference to this witness is peculiarly touching and beautiful.

"There is," said he, "one witness whose venerable appearance and sacred character sheds a hallowed influence over everything she says, which demands my implicit belief and reverential faith. I mean the aged mother of the prisoner."

He then relates her testimony, which discloses her reasons for believing her son insane.

"Now, gentlemen," he continued, "whatever you may say in regard to this testimony, I dare not disbelieve it. I revere the sacred source from whence it comes, and I trust, with the most implicit faith, in the nice observation, untiring anxiety and sleepless watchfulness of a mother's love. It is prompted by nature's strongest affections—affections which outlive selfish considerations, endure through all changes of circumstances, and die only with the last throb of expiring nature. . . . Can the mother be mistaken in the changes of her son's countenance—that object which she had watched from the first dimpling smile in the cradle, through all the varied changes of infancy, youth and manhood, till every well-known lineament became a subject of hope or



fear, and every change was reflected back in the sunshine glow of joy or the cloudy aspect of sorrow?"

Damon was convicted and executed, but the effort of his counsel to save him was a masterly forensic effort, and shed upon him the highest honor. Mr. Mullett was most ably assisted on this trial by the late Judge Houghton, of Chautauque County.

In October, 1833, a criminal trial of great interest took place at Ellicottville, New York. It was the celebrated case of On-oid-ah, the Indian woman, who had been indicted for the murder of a child. Mr. Mullett appeared for the defense. The prosecution was conducted by Anson Gibbs, then District-Attorney of Cattaraugus County, assisted by the late George P. Barker, of Buffalo. There have been but few cases tried in the rural districts which created the excitement and interest that attended this one. Mr. Mullett had been early informed that Barker had been retained to conduct the case against him, and prepared to meet that able and successful advocate, fully aware that he was a foeman worthy of his steel. George P. Barker, as appears in another part of this work, was no ordinary advocate. Perhaps there were very few who possessed so much of that subtle, persuasive eloquence before a jury which he did. The collision of two such minds could not fail to elicit the deepest interest. It seemed, as the trial progressed, that the strength and power of their intellects increased. Sharp and closely contested as was this trial, the distinguished lawyers were governed by the most perfect courtesy. Like two well-skilled swordsmen, who disdained any resort to a thrust or a parry which was not acknowledged by the rules of the combat, so these able contestants resorted to no warfare except that which is permitted by strict legal principles and rules.

When the evidence was closed, Mr. Mullett addressed the jury for the prisoner. He occupied their

attention four hours, and, as was said by a spectator, "it hardly seemed as though he had been talking one hour when he closed," such was the powerful hold which he gained over the minds of all present. There were several circumstances which intensified the interest of the case. The woman was the wife of a chief. She was intelligent, and comely in her appearance. When she was incarcerated she had a babe two months of age, which she idolized. As it was a healthy child, the sheriff was not disposed to have it in the jail, but, overcome by the frantic appeals of the mother, he permitted her to retain the infant; but such was her grief and sorrow at her situation, that within a short time the course of nature was changed—her milk dried up, and she was compelled at last to part with her child.

During the last night she was permitted to have the little innocent with her, she lay with it pressed to her heart, occasionally attempting to give it that nurture which no longer flowed from her breast. When morning came, it was taken from her and given to a sister who happened to be so situated that she could furnish the child with its needed sustenance. The grief of the poor woman on parting with her child knew no bounds.

The manner in which Mr. Mullett seized upon these circumstances was indescribably beautiful and thrilling. Such was his almost magnetic influence over the jury—over all who heard him—that when Barker followed for the people, in the rich strains of his legal oratory, he was in the position of Richard Henry Lee, when he followed one of the masterly speeches of Patrick Henry. It was some time before he could gain the attention of the jury. The spirit which Mullett had invoked could not be easily exorcised. It had permeated every avenue of sympathy—of thought. His powerful, electrical appeal still rang in their ears, and closed them to every other voice, and "not guilty! not guilty!! not guilty!!!" hung quivering on their

lips. Though Mr. Barker's speech was one of the most unequivocal productions of a powerful and accomplished mind and caused the jurors to listen, nay, it engaged their attention, it did but hold the feelings which Mullett's address had aroused, in abeyance, only to leap forth again in the jury-room—to culminate in a verdict of "not guilty."

His powerful but unsuccessful defense in the great case of *Saterlie v. Windsor*, in which he was opposed by the late Governor Young, was another of the many cases in which his eloquence seemed to bear him even beyond himself.

There was no effort at oratory in his speeches, no apparent grasping after effect, no rhetorical flourishes, all was simple—all was tuned to the voice of nature—almost insensibly his language gained the heart. It was like the stone in the ring of Pyrrhus, "which had the figure of Apollo and the nine muses in the veins of it, produced by the spontaneous hand of nature, with no help from art."

Mr. Mullett continued to practice at Fredonia, until 1841, when he removed to the City of Buffalo. His success in that city was a matter of certainty. He had often met the distinguished members of its bar in the forum, and he was warmly welcomed by them to the Queen City, as one whose intellectual superiority would be to them an acquisition of no small importance; such is the generosity of lawyers towards each other.

One of the prominent cases in which he was engaged, soon after his removal to Buffalo, was that of the Ogden Company against Oliver Lee, to recover the value of a large quantity of lumber purchased by the defendant of the Seneca Indians, upon the Cattaraugus reservation. The plaintiff claimed to recover by a presumptive right, purchased of Massachusetts. A large number of actions had been brought, and this case was to determine all. A verdict was found for the plaintiff. It was removed to the Supreme Court,

and in 1844, argued before that tribunal. Mr. Mullett appeared for the plaintiff, and Mr. Fillmore for the defendant. It was one of those questions for which the clear, sagacious, methodical mind of Mr. Fillmore was peculiarly adapted; and his argument was one of great power and ability. In the language of another, "Mr. Mullett addressed the court in an argument of great length, and concluded with an apology for the time he had exhausted. Greene C. Bronson was the Chief Justice of the old Supreme Court. He was a judge of extensive and profound legal learning, thoroughly imbued with the doctrines of metaphysical and ethical science, and gifted with an extraordinary power of application, which rendered a life of severe and unremitting labor entirely natural to him. A close and philosophic argument was his delight, during which he took 'no note of time.'"

Judge Bronson listened to Mr. Mullett's apology, and then remarked :

"That the court needed the argument that had been made, and no apology was necessary."

Mr. Mullett was one of those lawyers who bitterly disliked the Code of Procedure. After his elevation to the Bench of the Supreme Court, he frequently displayed his disgust for it. While presiding at the Wyoming circuit, in 1849, a question as to the interpretation of a section of the Code arose. It was argued at some length by the respective counsel; when they had concluded, Judge Mullett addressed the Crier, as follows :

"Crier, you are a man of ordinary understanding, and within the meaning of the Code, you are a proper person to decide this question. Will you decide it, sir?"

As that functionary declined, Judge Mullett decided the question himself.

In May, 1847, he was nominated for one of the justices of the Supreme Court for the eighth judicial district; he was of course elected by a large majority.

By varied experience at the bar, as the prosecuting



attorney for Chautauque County—as a criminal lawyer, on the defense, and as civil lawyer, he was eminently qualified for the high judicial position to which he had been elected.

As a lawyer, “it was strictly true of Mr. Mullett, that he was entirely incapable of making a powerful effort in support or defense of a case in which he had no confidence; and no amount of preparation or consideration could draw him out in his full proportions, exhibiting his wonderful powers when there was an evident absence of merit. His head and heart kept close companionship, and, although he might misjudge, or be betrayed by the relation of clients, he was always an unwilling, and sometimes a weak counsel, in a bad cause, and he has been known to throw up the papers of a client, and indignantly walk out of the court-room in the midst of a trial, when he had been made the subject of imposition.” A distinguished member of the Chautauque bar, in a lecture before the Historical Society of Fredonia, thus describes the appearance of Mr. Mullett, when he first met him in the court-room, in June, 1838. “I took my seat in the bar; the members of the Chautauque bar were principally strangers to me. There was the bland and venerable Hazeltine, the accomplished and confident Marvin, the sharp and accurate Tucker, the amiable and industrious Brown, the honorable and affable Lewis, and at the further end of the bar, and near the prisoner’s box, sat Mr. Mullett. I assigned them all their proper positions, and him with the rest. With a *physique*, which certainly would not recommend him, made ugly by an eye which an accident had bleared; I concluded that he was a *specile gratia* member, and was there to represent a country certiorari, or to defend some petty thief. He soon took his seat as counsel for the plaintiff in the first cause called. His client was a poor man, and had lost his buildings by the fire kindled by his rich neighbor, on his fallow ground; and the suit was

brought to recover the damages he had sustained ; it was an aggravated case, and had not proceeded far, before I concluded I had misjudged the plaintiff's lawyer; and I inquired who he was. At length the evidence was closed ; it was one of those cases which justified the severest stricture upon, and denunciation of, the conduct of the defendant, who had resisted the payment of damages, because his opponent was a poor man. Mr. Mullett saw his opportunity to do a poor man, and at the same time a rich man justice, and he did so in terms that were terribly severe, and in the most scathing language, he denounced and swept away those distinctions which property creates. It was such efforts as this, that distinguished him as the poor man's lawyer."

In the year 1846, he was appointed Attorney for the City of Buffalo, and he held that office until he was elected a justice of the Supreme Court of the State.

Judge Mullett possessed many generous, amiable, and high-toned elements of character, which threw his faults into the shade. His honesty was unimpeachable, and his word might, upon any subject, be relied upon as an absolute conclusion.

With the poets and orators of ancient and modern times he was equally familiar. With the philosophy as well as detail of history, with the current literature of the day, he was familiar, while in all that pertained to the learning of his profession, he had few equals. His memory of leading adjudicated cases was remarkable. At the bar or on the bench, his facility of reference to these cases rendered him ready and strong. As a judge, he was acute, sagacious and reflecting. Even during the hurry and excitement of the circuit, his active mind and his extensive knowledge of the law, enabled him to dispose, with great accuracy, of a vast amount of business. His faults as a judge arose from his having so long been the active advocate, that even while hearing a cause as a judge on

the bench, he could not always divest himself of the spirit which pervaded the contest of the forum. With the light of long experience, with an almost intuitive sagacity, he soon discovered the right and the wrong of a case; and he had little patience with the efforts of counsel on the side which he knew to be in the wrong. Hence he was sometimes charged with prejudging a case.

He usually, in his charge to the jury, divested a case "of those artificial incumbrances and entanglements, the creation of artful counsel, and presented the points in that clear and distinct manner which all jurors could understand, leaning always strongly to the equities of the case, *What is right?* This was his polar star; and with his eye ever upon it, he rendered many judicial decisions which remain to-day as the law of the land, and the written evidence of his abiding integrity."

His opinions exhibit great research, are written with care and perspicuity, always approaching the point on which the case turned, with a directness and celerity which rendered it apparent even to a casual reader.

Early in the year 1858 his health began to give way before the weight of years and the long labors of his professional and judicial life. For a while his strong physical powers struggled with approaching disease, sometimes sending a ray of hope to his anxious friends; but as the autumn approached, it became apparent that his long life was rapidly drawing to a close. He sought that comfort which is from above, that peace of mind which passeth understanding, which robs death of its sting and the grave of its victory. He lingered until the 10th day of September, 1858, and then passed forever from earth's troubled scenes.

## HENRY K. SMITH.

**General Characteristics.**—Born on the Island of Santa Cruz.—Rank of his Father.—Painful Accident to Him.—His Mother, Her High Intellectual Qualities.—Her Influence over Henry.—He Leaves Home.—His Father's Advice.—Laconic Reply.—Placed under the Care of Dr. Berry, at Baltimore.—Progress in his Studies.—His Mental Powers.—Engages as ■ Clerk in a Dry Goods House in the City of New York.—Singular Circumstance which caused him to Leave his Employers.—Listens to a Trial in which Daniel Cady and Ogden Hoffman are Opposed.—Decides to be a Lawyer.—Seeks Mr. Cady, at Johnstown.—Character of Mr. Cady.—Smith Enters his Office.—Marcus T. Reynolds.—The Debating Club.—Smith Admitted to Practice.—A Delegate to the Young Men's Democratic Convention.—Makes the Acquaintance of Silas Wright in a Singular Manner.—Smith's Speech in the Convention.—Meets with Israel T. Hatch, who Invites him to Buffalo.—Invitation Accepted.—Commences his Practice in that City.—His Success.—His Partnership.—His Capacity as ■ Lawyer.—Incident in a Trial.—Appointed District-Attorney.—Recorder of Buffalo.—Mayor.—Incident While Mayor.—Smith as ■ Politician.—His First Marriage.—Loses his Wife.—Second Marriage.—Loses his Second Wife.—Effect on his Mind.—Sickness.—Death.

THE life of Henry K. Smith demonstrates the truth of the old poet's creed, that the mind of man is his true kingdom, in which he can adopt the imperious language of Louis XVI., "the state is myself." As a lawyer, he was imbued with the spirit of legal science, instinctively perceiving and observing all its limitations, its harmonies, its modulations, and discords, just as a cultivated musician can perceive, without an effort, what is congruous or incongruous in the harmony of sound. He possessed much ability for legal disquisition and polemics. His legal speeches and arguments manifest the distinction between a lawyer possessing a philosophic mind, enlarged by extensive reading, disciplined by thought and reflection, and the mere legal martinet—the case lawyer or empiric, who uses legal precedent as the mason does a brick or stone, the carpenter a stick of timber, without under-



standing the philosophy, the logic, or lesson by which it was established.

As an orator, in the popular assembly, he was dignified, easy, natural. As a politician, he was keen and discriminating, a close observer of men. In conducting party measures, he moved with facility and success, perfectly understanding how to catch "the tunes of the times." There was nothing of the trimmer about him, for he was ever bold, and spoke "straight out," a Democrat, never furling the banner of his party for the sake of policy, but always carrying it aloft, or like Bruce at Bannockburn, planting its standard in the hard rock. He wielded a strong and polished pen, which was the true emblem of his mind. Either in speaking or writing, there was a beautiful concord between his thoughts and his language. He read with perfect selection, not with the voracity of an intellectual dyspeptic. He thought with accuracy and consistency. He had a fine imagination, which made him a poet, so far as to enable him to appreciate what is most excellent in poetry. His profundity and metaphysical acuteness, his delicacy of taste, caused him to turn away from much which passes under the name of poetry. Not that he wrote poetry, for he did not. Yet in his hours of relaxation from professional labor, he read the productions of those great poets which bear the impress and the seal of genius, learning, and taste; for one of the tests of genius is, that it calls forth power in the minds of others. He believed that the fictions of a great intellect "are often the vehicles of the sublimest verities," that its flashes often open new regions of thought, and throw new light on the mysteries of our being, "that often when the letter is falsehood, the spirit is the profoundest wisdom." There are those who believe, or affect to believe, that a lawyer, to be successful, must be as emotionless as stone, as imperturbable as Diagonos. At an early period in the career of Edmund Burke, it was said of him that his writings and his

speeches, while they evinced much imagination, even poetic inspiration, they exhibited little of the stern, cold logic of the law. Time, however, demonstrated the fact, that with his poetic taste and imagination, he united the highest legal abilities. The schoolmaster who taught his pupils that laughter, under any circumstances, indicated a weak intellect, maintained a theory equally as plausible as those who ignore imagination or poetic taste in the legal profession.

Henry Kendall Smith was born on the island of Santa Cruz, April 2nd, 1811. His parents were Jeremiah Smith and Jane Cooper. They were of English origin. At the time of Henry's birth, the island was in the possession of the English, but in the year 1815 it was restored to the Danes, its original possessors. Mr. Smith was an architect and builder. Eminent and distinguished in his calling, he derived a large income from it. He was a man of energy, ability and perseverance. During the occupation of the island by the English, his pecuniary affairs were greatly enhanced, but the change of government resulted disastrously to him, reducing him nearly to poverty. Yet such was his social standing and respectability, that he was promoted to the rank of major in the Danish provincial army, a position which offered him a small income.

One day, however, while passing through a corridor leading to some casemates in a fort, a quantity of quicklime was, by some accident, thrown into his face. The effect was terrible. In dreadful agony he was conveyed to his room, where he suffered for many weeks. At length his confinement ended; but he was blind for life. At this time his family consisted of two sons and two daughters. One of the sons is the subject of this sketch.

Mrs. Smith, the mother of Henry, was a woman of uncommon endowment in person and mind. She was one of those who are not easily discouraged by mis-

fortune—one of those who ever look on the bright side of life, and fight its battles bravely. Like the mother of the great Corsican, she directed the attention of her children to the future. She held up before them the great, the gifted and the good, as models for them to follow. All sentiments of honor, of courage, of large-heartedness, of generosity, of kindness, she nursed and cherished in the hearts of her children. She taught them that success is conquest, and that no man holds it so fast as he who wins it by conflict. In short, she was one of those women who rule society by that invisible but mighty power, that tenderness, that potency of persuasion, which molds, guides and controls the intellect of her children. What princess, what sovereign can do more than this? Nay, where is the ruler that can do as much? It has been truthfully said, “that great men are ever much more the sons of their mothers than of their fathers, while seldom have great men seen their own greatness survive in their sons.” Henry was, indeed, the son of his talented and noble mother. Many years after her death he beautifully said of her, “that the great rules of the gospel were so settled in her mind that she scarcely deliberated between degrees of virtue.” Hence, the early home influences which surrounded Mr. Smith were of the purest and most elevated character.

With the first development of his nature he indicated a love of study, and at an early age he was placed in school, where he remained until he was eight years of age, when he was sent to Baltimore, and placed under the tuition of Rev. Dr. Berry, a distinguished minister of the Church of England, an accomplished and elegant scholar. At this time the elder Smith held heavy claims against the Danish government, incurred by its action in taking possession of Santa Cruz. But such was his anxiety to aid in the education of Henry, that he settled the whole in consideration of receiving at once, the small sum of fifteen hundred dollars.

In this settlement, he gave the following receipt: "I accept the sum of fifteen hundred dollars, in discharge of my claim against the Danish government, for the sole purpose of educating my son Henry, because I cannot delay until all that is justly my due can be collected by law."

As the boy was leaving home, his father said to him, "Henry, young as you are, you must know that you have now mainly to take care of yourself. According to your conduct, you will either sink or swim."

"I'll swim, father," was the laconic and earnest reply of the boy.

Actuated and inspired with this idea, he left the home of his father forever.

Guided by his accomplished and amiable preceptor, he made rapid progress in his studies, and perfected himself in the natural sciences, in the ancient and English classics, developing those intellectual powers which distinguished him in after life. The bright mind, the studious habits, and genial nature of the young man, soon won the confidence and warm esteem of Dr. Berry, and he labored to advance his pupil with unremitting zeal. He even aided him in his pecuniary matters. The young student's culture, both æsthetic and scientific, was in harmony with his fine physical and mental organization.

After attaining his thirteenth year, he received the rite of confirmation in the Church of England; and though but a boy of tender years, yet he formed his views of Christianity with caution, without asperity, and uninfected by bigotry. Through life he loved and revered the lofty ethics, the sublime teachings, the beautiful and consoling precepts of the Bible; and in the deep earnestness of his nature, he ever believed that "prayer ardent opens Heaven." Amid the most engrossing scenes of his life, such prayers touched the fountain of his feelings, and wherever he listened to them, whether in the great congregation, in



the domestic circle, or in the lowly cabin, he was impelled to say, "How dreadful is this place! this is none but the house of God." If, like Coleridge, he sometimes had thoughts and feelings better than his life, let those who are without faults cast a shadow upon his memory.

Though the mental powers and habits of research which young Smith exhibited, well fitted him for one of the learned professions, yet such were his circumstances, that he could not control the means for procuring a profession, and at the age of seventeen, he was placed as clerk in a wholesale dry goods store in the City of New York. Here he applied himself with great diligence to his new occupation, although the Promethean spark within rendered him conscious that he was designed for some other occupation. When the duties of the day were over, instead of plunging into amusement and recreation, he would retire to his room and study the speeches of Burke, Erskine, Phillips, Hamilton, Webster, and other great masters of eloquence. Here, too, he continued to pursue his classical studies, determined, whenever an opportunity occurred, to change his occupation. He waited for some time in vain, but at length an occurrence took place which changed the whole current of his life.

One morning while engaged in boxing some goods, his employer, who was standing by, sharply reprimanded him for his manner of procedure :

"You act like a woman, or worse, like a clumsy boor," said the merchant.

Just at that moment Smith, who was driving a nail into the box, struck his thumb. Instantly throwing down the hammer, he turned fiercely to the merchant and said :

"Box the goods yourself ; pound your own thumbs, for that is all God ever intended you to do. He has got something else for me to attend to."

Putting on his hat, he left the store and the aston-

ished merchant forever. Some time previous to this event, he had been introduced to the late Daniel Cady, of Johnstown, New York, who was engaged in an important trial in the city. He had listened to that distinguished advocate's address to the jury with the keenest delight; he saw the judges, the jury, and the spectators listen with equal attention to his powerful argument. He heard the reply of Ogden Hoffman, which was replete with that logic and eloquence which rendered him peerless among the gifted lawyers of his day; and from that time Smith was inspired with a love for the legal profession, which continued until the close of his life. From that day he determined to become a lawyer.

Immediately after leaving his employer in New York, with the small sum of money which constituted his whole fortune, he hastened to Johnstown, found Mr. Cady, and in a few words related to him the history of his life, explained his present situation, and asked permission to enter his office as a law student. Mr. Cady remembered the bright, intelligent young man whom he had examined as a witness in New York, was pleased with his manners, and self-reliance, and welcomed him to his office, promising him his assistance and influence in obtaining his profession. This renowned lawyer and distinguished jurist did not live for himself alone; his life, whether as the private citizen, the lawyer, or the judge, was a model. Those feelings of unkindness which sometimes obscure and sully the goodness of excellent men, seldom or never passed over him. In his profession, amidst the collisions of rivals, his ambition was so controlled by his generosity and uprightness, that he was never known to tarnish with envious breath the honest fame of another, or withhold a ready testimony to another's worth. His life was more than a model; it was a rich heritage to the American bar.

Soon after Mr. Smith commenced his legal studies, one of those common institutions, which have devel-

oped the genius of many a statesman, given to the bar and the pulpit many an ornament—a debating club, was formed in the village. Here his talents soon began to exhibit themselves, and his eloquence drew large crowds to the club room. Marcus T. Reynolds was at this time practicing his profession at Johnstown, and was a rival of Mr. Cady at the bar. That profound and gifted lawyer, early discovered in the young student, a mind of no common order, and though connected with a rival office, he sought his acquaintance and became his friend for life.

It is too often the case with young men, conscious of possessing fine intellectual powers, that they depend too much upon their natural endowments, and thus neglect that severe mental discipline, that thorough and patient investigation, without which, especially in the legal profession, distinction is seldom attained.

Few persons leap, Pallas-like, into full professional honors and success, though in this, as in all other professions, “impudence sometimes attains to a pitch of sublimity,” and at that point it has produced many distinguished advocates, that is to say, advocates who make more noise in the court room, overhaul a more ponderous pile of books than he who has wasted the midnight oil in learning their contents. Such men scramble up the delicately graduated professional ladder, at a bound. In politics, they ascend, if possible, still more rapidly; there, they learn a profession, not exactly mentioned in the books, only by way of wholesome penalties, for being too close practitioners in their arts.

Mr. Smith was untiring in his devotions to his books, and his memory took the impression of what he read, like softened steel; it hardened when the page was closed, so that he never lost the thought or theme of the author.

He continued his studies with Mr. Cady until

he was ready for his examination, gaining means to defray his expenses by teaching school.

He was admitted to the bar in May, 1832, and commenced practice at Johnstown. In the following October, the Young Men's State Democratic Convention met at Utica, and Mr. Smith was one of the delegates from the County of Montgomery. Here he was first known in the politics of the State. A gentleman of distinguished position, who was present, relates that during the session of this convention, while a resolution of much importance was pending, a young man unknown to most of the members, several times attempted to obtain the floor, but without success—older and better known members always gained precedence with the chairman. Determined to be heard, he made another effort, and again failed.

At length Silas Wright, who was a member of the convention, and who sat behind the young man, arose, and, in a stentorian voice, exclaimed :

“Mr. Chairman! Mr. Chairman!”

The gentleman was recognized by that officer with the usual sign.

“I desire, Mr. Chairman,” said Mr. Wright, “that you will listen to the young gentleman directly in front of me, whose name I have not the pleasure of knowing. I wish to hear him, sir, and I believe this convention does.”

The chairman bowed in assent; and Mr. Smith, for he it was, courteously thanked Mr. Wright for his assistance, and then proceeded to deliver a speech which took the convention entirely by surprise, and gave him at once the reputation of an accomplished and logical speaker. It combined the daring in imagination, metaphysical in reasoning, and the inventive in theory.

The question before the convention was upon the choice of a proper candidate for governor. The name of James Kent having been introduced against



William L. Marcy, Mr. Smith favored the nomination of the latter.

“Mr. Speaker,” said he, in the course of his remarks, “we are here as the representatives of the Democratic party of the great State of New York, whose history is coeval with the corner-stone of the nation, and whose destiny, no matter what vicissitudes await it in the future, is to stand with that corner-stone as long as a relic of it shall survive the lapse of time. I cannot, therefore, consent to name as the standard-bearer of that party, one who has rejected its great principles. Sir, I respect the gentleman whose name has been introduced in opposition to Mr. Marcy, as a man and a lawyer. I respect him for his purity, honor, and incorruptible integrity as a judge, and I will cheerfully award him all the honors, except this one. I am not willing, sir, to build him here a tabernacle to his political faith, though he comes in the transfiguration of the old apostles of the Democracy. I cannot forget, sir, his long and uncompromising devotion to the Federal party. Do gentlemen say that he has recanted his Federal faith? Sir, his party has wasted away before the breath of Democracy, its idols and its altars are broken, and where its incense was once burnt, the fires of other offerings glow. If he comes in the name of Democracy let us receive him, but let us reserve for the true and tried of our party—those who have never worshiped at the shrine of strange gods—the honors and distinctions of which they are alone worthy. I hesitate not, sir, to say that such is William L. Marcy.”

This speech was received by the convention with the warmest applause. Mr. Marcy received the nomination for governor, and was elected, and ever held Mr. Smith in high esteem. Martin Van Buren, who was in the convention, and also Mr. Wright, both sought an introduction to him. The latter complimented him in a speech which he made in that body.

From that time Henry K. Smith continued one of the leaders of the Democracy in the State of New York until his death.

At that convention, he made the acquaintance of Hon. Israel T. Hatch, a member from Buffalo, upon whose invitation he made that city his home. He removed there in the spring of 1837. Immediately forming a copartnership with Mr. Hatch, who was then surrogate of the county, and a lawyer of great respectability, he at once commenced successfully the practice of law in his new home. He continued with Mr. Hatch until the autumn of 1838, when his business relations with that gentleman ceased.

After practicing alone for a short time, he was offered a copartnership with Hon. George W. Clinton, which he accepted. This period will be remembered in the history of Buffalo, by the formation there of several law firms, among which were Fillmore, Hall & Haven; Barker, Hawley & Sill; Potter, Babcock & Spaulding; Rogers & Flint; Warren, Allen & Allen. Amid this array of legal talent, Mr. Smith entered the arena of political strife. But he possessed a mind, which under strong and generous emotions, stimulated by collision with gifted antagonists, acquired new command of its resources, new energy of thought and new vigor of intellect. Ably sustained by a partner whose powers of mind, and legal ability, had already given him an eminent position in his profession, the firm of Clinton & Smith was second to none in the city.

After continuing in this relation some time, Mr. Clinton was appointed collector of customs, and the firm was dissolved. After this dissolution, Mr. Smith practiced with Mr. Williams for a time. That firm being dissolved, he accepted a partnership with General Isaac Verplanck, which continued for years under the most prosperous circumstances. At length it was dissolved, and Mr. Smith formed another business con-

nection with R. U. Stevens, Esq., which continued until the death of the former.

During all these changes in business, Mr. Smith's reputation as a lawyer gradually increased, until he stood in the front rank of his profession. As an advocate, he had few equals at the Buffalo bar, or in western New York. He was engaged as the counsel for one or the other of the contending parties, in most of the important trials which occurred in the city and vicinity in those days, many of which are now recorded as precedents in the reports of the Supreme Court, Court for the Correction of Errors, and the Court of Appeals. In all of these tribunals, Mr. Smith frequently appeared. His arguments on these occasions were regarded as able and searching forensic efforts. "They sent forth no scattered rays to dazzle with their brilliancy, but poured a steady stream of light, concentrated upon the point they would illumine."

And it was on these occasions, when "the matter matched his mind," where his highest powers were fully put in requisition, that he justified the public in the rank it assigned him at the bar. One of the strong points of Mr. Smith's professional acquirements, was his successful manner in conducting a cross-examination: in this branch of practice he exhibited a sagacity, a power of reading the thoughts of the witness, of anticipating his answers, of ascertaining his peculiarities, his prejudices, his subterfuges, and, finally, of drawing forth "unwilling facts."

On one occasion, in the defense of a woman for murder, he interposed the plea of insanity. Entertaining no doubt that this was the true condition of the woman when she committed the dreadful crime, he threw his whole soul into the defense. Having, as he believed, established her insanity, he rested his case. The prosecution, determined on a conviction, introduced witnesses to establish her sanity, among whom was a certain village doctor not overstocked with learning, but making up in assurance what he lacked in acquire-

ments. This person testified, with considerable vain glory, that he had practiced medicine for a long time, during which he had successfully treated many cases of insanity; that he was familiar with the disease; that he had carefully examined the prisoner; that he had no doubt but that she was perfectly sane when the deed was committed.

“In fact,” said he, “the whole diagnosis of her case convinced me that there was about her no cerebral disorganization; that she was only wicked, perverse, and awfully malicious.”

With this flourish, he was about leaving the stand, thinking his task was done.

“Stay a moment, Doctor,” said Mr. Smith. “Let me ask you a few questions.”

With a look that plainly said, “Go ahead, sir, you can make nothing out of me,” the doctor took his place upon the stand again.

“How old are you, Doctor?” asked Mr. Smith.

“I am forty-five, sir.”

“How long have you practiced medicine?”

“About eighteen years.”

“During that time how many cases of insanity have you treated?”

“Oh, I don’t know; a great many.”

“Well, have you treated a hundred?”

“I guess not; but if you will let me send for my books, I can tell.”

“Never mind your books. Make an estimate of the number?”

“Well, then, say about forty.”

“Very well, doctor, what is insanity?”

“It is a disarrangement of the faculties.”

“Did you ever have any difficulty in ascertaining a case of insanity?”

“Not in the least.”

“What are the symptoms of insanity?”

“The patient’s actions, principally.”

“What are some of those actions?”



“Why, he always shows a propensity to do wrong ; to do what he ought not to do.”

“Doctor, what is sin ?”

“Sin—sin—why sin is a propensity to do wrong.”

“Now, when a man does wrong, tell me how you ascertain whether the act is the result of sin or insanity ?”

The answer to this question required more knowledge of pathology and theology than the doctor possessed. After making several attempts to answer, he declared he could not, and was permitted to leave the stand.

In the year 1838, Mr. Smith was appointed district-Attorney of Erie County. This appointment was tendered to him as a compliment to the lawyer. It was then, as it still is, an office requiring the exercise of much legal ability and learning. After discharging its duties with much credit, for seven months, he was compelled to resign, in consequence of the large amount of civil business which had accumulated on his hands.

In the year 1844, he accepted the office of recorder of Buffalo ; in the discharge of the duties of which he evinced much judicial ability, a fearless integrity, and a modest independence. He saw nothing, knew nothing, cared for nothing, except the evidence and the law in a case. On the bench he presided with ease, dignity, and courtesy. With these qualifications, it was impossible that he should be otherwise than popular. He occupied this position for several years, and was at length succeeded by Judge Masten.

In the year 1850, he was elected mayor of Buffalo. During his mayoralty the governor-general and parliament of Canada, while on a tour of inspection of the public works, proposed to visit Buffalo. Accordingly, notice to that effect was sent to Mayor Smith, announcing the time when they would reach the city. But owing to some unforeseen event, the distinguished visitors were delayed until long after the appointed

time. The military and civic societies, which had turned out to receive the guests, in obedience to the order of the mayor, had been dismissed, when notice was received of their approach. With commendable activity he prepared for them such a reception as circumstances would permit. In a brief, dignified, and statesmanlike manner, he welcomed the parliament and its officers to the city.

The liberal, high-toned, and philosophic views of international policy which this speech contained, spoke highly for the abilities of Mr. Smith. It was received with much gratification by the Canadian parliament, and by the public generally. So gratifying was it to the visitors that copies were sent to the home government, with the whole proceedings, by Lord Elgin; and in due time, Earl Gray, then minister of foreign affairs, acknowledged the receipt of it to our secretary of state.

It would be strange if a man with the abilities, and in the situation of Mr. Smith, should not have been attracted by the allurements of politics. In many respects, he was singularly qualified for a political leader and statesman. Had he lived where his qualifications could have had a proper sphere of action, his name would have been written with the most distinguished statesmen of his time, for, after all, circumstances make the man. There are many, whose names are now high on the scroll of fame, who never would have been lifted from obscurity but for the recent rebellion. By his talents alone, Mr. Smith, as we have seen, at an early age, became a leader in a great and powerful party. That he had abilities for a far higher position than he ever attained, none will deny.

The doctrines and political philosophy of Jefferson were deeply impressed in his nature, and he clung to them with obstinate fealty. He belonged to that school of politicians, now almost traditional, about which lingers the charm of political honesty. Mr. Smith was repeatedly placed in nomination for the

Assembly, several times for State Senator, and twice for representative in Congress. But during these periods, his party in the district, was in a hopeless minority, and his defeat was a matter of course. Yet his name always gave strength to the party; and, as was once remarked by an opposing candidate, "The name of Henry K. Smith always raises voters from the vasty deep." No higher compliment than this could be given by a political antagonist.

In the year 1840 he was a delegate to the national convention which nominated Mr. Van Buren for president. His speech, made on the question of representation in this convention, was listened to with profound attention.

In the year 1848, he again represented his district in the national convention at Baltimore, which nominated Mr. Cass for president. In this convention the State of New York was represented by two sets of delegates. After the admission of both delegations, Mr. Smith delivered a speech on the manner of counting the votes of these delegations. It was a masterly and patriotic effort. Portions of it were inspired by prophetic truth. He was appointed postmaster of Buffalo in 1846, and held the office two years and a half.

In the spring of 1834, Mr. Smith was married to Miss Voorhies, the accomplished daughter of a wealthy merchant of Johnstown. This union, which was the result of mutual and deep affection, and which promised much happiness, was terminated by the death of Mrs. Smith, which occurred shortly after her marriage.

In the year 1848, he was united to Miss Thompson, daughter of Sheldon Thompson, Esq, of Buffalo. This lady, to much personal attractions, added many intellectual and shining qualities, with the possession of that prudence and polish which rendered her a proper companion for a man like Henry K. Smith.

But death again entered his household and removed her who was its life and light, the hope of his coming years. This estimable lady survived her marriage but eighteen months, leaving a son, Sheldon Thompson Smith. Her loss was a source of deep, almost inconsolable, grief to her husband. But in the care and education of his son, in his professional duties, in politics, in all the affairs and duties of life, he sought forgetfulness.

“But ever and anon, of grief subdued  
There came a token like a scorpion’s sting,”

and he could not forget the loved and the lost. His mother’s softness and gentleness crept to his heart and the strong man mourned, how deeply was never known, save by those who knew him best. If as a balm to his “hurt mind,” he sometimes sought lethe, or that which, at best, brings only chaotic misery, let us remember that there is no darkness like the cloud of sorrow, and if he, who in this wrong world, oppressed with mental pain, “worn with toil, tired of tumult, wounded in love or baffled in hope,” cannot take the wings of a dove and fly from all error, he should find no unforgiving censors in these who have never suffered, and therefore have never fallen.

But Henry K. Smith was always “better than his mood.” However baffled, sad or absorbed, his dignity, his sense of the lofty, and the beautiful, never deserted him; and these gave tone, elevation, spirit to each phase of his life, and rendered its record suggestive. His social qualities were of the highest order. His sensibilities vibrated to the lightest touch. He sought and drew to himself persons of the highest culture and refinement. His faults were, perhaps, as many as those of other men in his sphere of life and activity.

“Then why not speak of them more plainly?” perhaps some cynical critic may ask.

Simply because his virtues, his talents and useful-



ness have thrown them forever into the shade; for such is the destiny of excellence when linked to the common frailties of man.

A traveler who had a passion for visiting antique churches and cathedrals, always sought the charnels beneath them, and always disregarded the grand frescoes and beautiful altar pieces of Horberg, the Madonna of Raphael, the graces of Correggio, the architectural beauty and grandeur about him. When asked why this singular preference, he replied that amid so much perfection, beauty, and elegance, he was anxious to learn how much corruption there was, how much he could find that was revolting. Reader, mine is not the task, nor the preference, of that traveler. It is enough, if in the character and life of men like Henry K. Smith, the bar, society, and humanity have been adorned. Let others search the charnel house for human corruptions.

Mr. Smith died on the 23rd day of September, 1854, in the forty-third year of his age. And as was said by an eminent writer on the death of Sir Robert Peel, "the falling of the column revealed the extent of the space it had occupied."

## HENRY WELLS.

His Early Education.—Enters the American Army in 1812.—Occupies Fort Erie.—Description of the Fort.—Battle of Fort Erie.—Narrow Escape of Wells.—Returning Home.—Commences the Study of Law with Vincent Matthews.—Called to the Bar.—John B. Skinner.—Commences Practice at Bath.—Character as a Lawyer.—Defends ■ Man for Shooting a Hog.—Pathetic Speech of Defendant's Attorney to the Jury on the Cruel Manner in which the Hog was Shot.—Singular Place where the Hog Received his Mortal Wound.—Defends a Lady for Breach of Promise.—Singular Nature of the Case.—Makes a Fortunate Discovery, and Wins the Case for the Lady.—Appointed District-Attorney.—Engaged in the Great Case of the People *v.* Douglass.—Description of the Trial.—The Conclusion.—The New Trial.—Circumstantial Evidence.—Removes to Penn Yan.—Continues his Practice There.—Elected ■ Justice of the Supreme Court.—Character as a Judge.—Samuel H. Wells.—Death of his Whole Family.—His Own Death.—Death of Judge Wells.—General Character.

HENRY WELLS was born at Kinderhook, October 13, 1794. His father, Dr. Benjamin Wells, was a highly respectable physician and surgeon. He was educated in the City of New York, and commenced his private practice there, but after a few years he removed to the County of Columbia. At the commencement of the Revolutionary war, he entered the Continental army as surgeon. During the occupation of New York city by the Americans, he was connected with the military family of Major-General Putman. He was afterwards promoted to the position of surgeon on the staff of Washington, where he served two years. At the close of the war, he returned to Kinderhook and resumed his practice. At length, attracted by the glowing descriptions which were given of western New York, he was induced to visit that distant region. Finding the reality equal to the description, he selected a place of great natural beauty, on the banks of the Crooked Lake for a residence. This was

in the town of Wayne, Steuben County. Returning to Kinderhook, he formed a colony of his friends, and removed to "their new home in the west." At this place, Henry spent his boyhood days, excepting the time in which he was absent acquiring his education. At a very early age, he exhibited a thoughtful, intelligent mind, a love of study and investigation; his father, therefore, determined to give him the advantage of a good education. Accordingly, he was sent to a select school for boys, which was taught in his father's neighborhood, by a Presbyterian clergyman, who was an excellent English and classical scholar. Under the instruction of this gentleman, he made great proficiency, which encouraged his father to give him better advantages. Accordingly, on attaining his fourteenth year, Henry was sent to the Kinderhook Seminary, then one of the most celebrated institutions of learning in the State. Here he remained until he was eighteen years of age, when, owing to the delicate condition of his health, he returned home, where he resided until the spring of 1814. Dr. Wells had now retired from practice, turning his attention to the cultivation of a large farm. Under the advice of his father, Henry engaged in such labor upon the farm as his health would permit. His leisure hours were devoted to a review of his studies, and to a critical reading of the English classics. War with England was then raging; young Wells soon caught the martial spirit which everywhere pervaded the State, and he determined to enter the service of his country. In the spring of 1814, the war spirit became intensified by rumors of invasion from the British, which were rife throughout the State, partly founded on conjecture, and partly on reliable information. The whole western and northern frontiers were in a state of wild excitement and alarm. Governor Tompkins prepared to meet all threatened danger with patriotic activity, which inspired confidence in the people, while it gave the Empire State the proud distinction of being fore-

most in sustaining the patriotic Madison in his stern grapple with the invaders of our country. Troops were rapidly raised, perfected in military discipline, hurried to the field, and everywhere the roll of the drum called the patriot to duty. Early in the spring of 1814, a company was recruited in the county of Steuben; and was commanded by Captain John Kennedy, of Bath.

Among the first who enlisted into this company was young Wells. He was elected sergeant, and immediately commenced the work of perfecting himself in military knowledge and drill. He soon became a good tactician, and was promoted to the rank of ensign. His company was attached to Colonel Hopkins's regiment of infantry, and early in the following July, took the field at Black Rock. After frequent skirmishes with the enemy, the regiment crossed Niagara river, and joined the American forces then holding Fort Erie and the works surrounding it.

This once powerful and important fortress stands on the Canada side of the Niagara, nearly opposite Buffalo. Its gloomy walls, dilapidated bastions, and ruined casemates stand out grim and solitary against the western sky, telling of sieges, battles, attacks and repulses, of death "in the imminent deadly breach," and finally of all "the pomp and circumstance of war," with its havoc and destruction. Many a vanished year has swept over those walls, black with the miner's blast upon their heights. Heroes have trod the spot, and on their ashes the careless visitor now treads.

In this fortress, and in the works about it, on the 16th day of September, 1814, lay the American army. Below, and partly surrounding it, were the British forces, who, at an earlier period of the war, had been driven from Fort Erie by the Americans. Determined to regain possession of so important a work, and annoyed by the Stars and Stripes floating de-



fiantly over their own dominion, they had fiercely besieged it for a long time.

Day after day their shot and shell rained upon the fort, while their works and parallels were gradually approaching it. Nearer, and nearer, they advanced, guided by their skillful engineers, and now their commander confidently believed that within a few short hours, he would re-enter Fort Erie with his victorious columns. But on the morning of the 17th of September, the Americans suddenly moved from their work, fell like a thunder clap upon their besiegers, and after a short but sanguinary battle drove them from their works to the plain of Chippewa, with a heavy loss in killed, wounded and prisoners.

In this battle young Wells exhibited the cool intrepidity of a veteran. As his regiment entered a piece of woods in front of the British, they opened a murderous fire of grape and canister upon it, and many of his comrades fell by his side; but the enthusiasm of the Americans could not be checked, and over the dead and dying, they rushed to victory. As they were entering the works of the enemy, a British sergeant discharged his musket at young Wells; the bullet grazed his side, and mortally wounded a young soldier who was partly in his rear. The next moment the sergeant was captured, and would have been despatched on the spot, had not Wells interfered and saved his life.

Soon after the battle of the 17th of September, Lieutenant Wells moved with his regiment across the river to Black Rock. He continued in the service until the middle of the following November, when he resigned and returned to his home.

While a student at Kinderhook, he decided upon entering the legal profession, and soon after retiring from the service, he entered the office of Vincent Matthews, at Bath, as a student at law.

Dr. Wells had made the acquaintance of this eminent lawyer in the city of New York, while the

latter was pursuing his legal studies in the office of Col. Troupe of that city. A warm friendship commenced between them, which continued after they had become residents of Steuben county, and through life. The ingenuous character and respectful manner of Henry, his candor, intelligence and general information, early attracted the attention of Mr. Matthews, and he readily received the young man into his office, extending to him every advantage in his power for the prosecution of his studies. Mr. Wells became at once a close and diligent student, reading, not simply to prepare for examination, but for the purpose of enabling himself to discharge with honor the high and responsible duties of a counselor at law. He adopted the maxim of Lord Bacon: "It matters not that you read much or that you read constantly, unless you read with understanding and with memory." It was not long before the fruit of this devotion to study began to exhibit itself. "After he had been in my office a year and a half," said Mr. Matthews—speaking of young Wells—"he could draw a strong and practicable brief, with copious and correct reference to authorities."

This attention to his legal education did not cause him to neglect his classical and literary studies. Through life he was a close student of England's great poets. He particularly admired the healthy honesty and manliness developed in the style and sentiment of Pope; the dignified and solemn utterances of Young; that noblest monument of human genius, *Paradise Lost*; the intuitive sagacity, the keen appreciation of life, and vivid picture of the passions, which appear on the page of Shakespeare; the freshness, vigor, and beauty of a rural life, which the pen of Thomson describes. Indeed, there is nothing, even in the *Bucolics* or the *Georgics* of Virgil, which is as redolent of the fragrance, of the forest and the field, or which brings home more forcibly the as-

pects of pastoral life, and the vicissitudes of the changing year, than Thomson's Seasons.

From the deep and splendid philosophy of the law, its great liberating and enlightening means of human action, Mr. Wells turned to such works as these, and drank in the inspirations of their authors. Those who knew him best, those who saw most of him in his hours of relaxation from professional and judicial labor, or those who watched him in that fatal decline, while yielding with dignity to the last enemy, as a hero yields to a conquering foe, will remember what interest and grace, the study of such works lent to his conversation. And yet he was apparently a man of literal and prosaic character.

There is often in the heart of the cold, the callous and unimpassioned, a place where beautiful thoughts and bright images, invested with colors which the passions throw over them—sympathies with suffering virtue—touches of tenderness, and even poetic feelings, live and glow, unknown to all the world, just as a beautiful and brilliant gem sometimes flashes its solitary radiance in a cold and distant chamber, clear, sparkling, but almost unknown.

After remaining in the office of General Matthews three years, Mr. Wells was fully prepared for his examination; and in October, 1817, he was called to the bar. Hon. John B. Skinner, of Buffalo, was also in the same class, and admitted at the same time. Three years after their commission as attorneys, these gentlemen were in the counselors' class together, and both admitted to the degree of counselor. Subsequently, they often met at the bar as opponents, while they were often associated in the trial of causes. In the commencement of their professional life, a mutual respect was engendered, which increased as years wore away.

After a long and brilliant professional career, Mr. Skinner has retired from the bar, to the enjoyment of the comforts and happiness of domestic life.

Immediately after his admission, Mr. Wells opened an office at Bath, and commenced practice. While a student, he made many friends among the leading business men of Steuben county, who held his probity and abilities in high esteem. They now gave him their patronage and influence. With such aid, joined to untiring industry, he soon gained a respectable and remunerative practice.

In June, 1818, he married Miss Margaret Haight, a daughter of General S. S. Haight, then a prominent member of the Steuben bar. Much domestic happiness resulted from this union; and that attachment which commenced in the early summer of life, continued undiminished amid the sober scenes of autumn and the approach of winter.

In the commencement of his practice, Judge Wells often appeared in justices' courts, where he frequently met lawyers of ability and high standing; although these courts were, as they are now, a kind of practicing school for young lawyers, the skirmish grounds for older ones. He met, in these tribunals, every variety of mind and ability.

Some years before his death, he related in the presence of the writer, a scene which occurred in one of those courts: "An action had been brought before a justice, by a man against his neighbor for shooting a hog, the property of the plaintiff. Mr. Wells appeared for the defendant. For the plaintiff there appeared a famous pettifogger, noted for his pompous eloquence, his brazen impudence, his sharp and cunning tact, and his want of everything like a systematic knowledge of the law. A jury was impaneled; the case was opened to them by the plaintiff's counsel in the following pathetic *and moving language*: "Gentlemen of the jury, you are impaneled here to try a cause of the vastest importance to this community. The defendant has been guilty of a crime and cruelty which the annals of crime has no equal, which shows him to be the most carniferous wretch that walks this



celestial foot-ball. Gentlemen, when I think of it, I can hardly help gushing out in a flood of tears and crying out with one of the Apostles, 'Oh, that my head was waters, and mine eyes a fountain of tears!' While this poor unoffending hog, whose only bad trait was an innocent waggishness, and that confined to one of his most extreme extremities, was quietly nipping the miserable grass that grew in this defendant's wretched pasture, thinking of no harm, this cruel monster, armed with a deadly gun loaded to the muzzle with missiles of death, stealthily approaches his poor unconscious victim, and discharged the whole deadly contents of that still deadlier gun right into his solar system, who with one fearful squeal of agony, fell dead on the ground!"

One of the earliest cases which Judge Wells conducted in the Supreme Court, was an action brought by one Breed, a widower with several children, against a wealthy, middle-aged widow lady for breach of promise. The novelty of the action, and the position which the parties occupied in the community, attracted much attention to the suit. The plaintiff was a near neighbor of the defendant, and was often employed by her in various matters. He alleged that she had frequently promised to marry him; that after some delay the day for the happy event was fixed, which for various reasons, both parties desired should be kept secret. The day came, but the lady refused to perform her part of the contract; and the disconsolate lover of forty-five was left to exclaim with the old poet, "Frailty, thy name is woman."

To assuage his grief, and to bring consolation to his wounded heart, he sought the redress which the law in such cases vouchsafes, and the lady was prosecuted for the sum of five thousand dollars. She alleged that no thought of marrying the plaintiff ever entered her heart; that the matter was concocted by the plaintiff and his friends to extort money from her.

Mr. Wells fully believed the lady, and prepared to defend her with all his energies.

An issue was joined, containing these allegations in substance, and the cause came on for trial at Bath, before Hon. William B. Rochester, then one of the circuit judges, in October, 1823. On the trial the plaintiff attempted to prove the engagement by circumstances, but failed. At length a witness was placed upon the stand, who testified distinctly to the circumstance of having been present at a conversation between the plaintiff and the lady, in which she stated the conditions of the engagement and the time when the marriage was to take place; his evidence, given with intelligence and much candor, seemed to fix the fate of our fair defendant, and her defense was *regarded as hopeless*. The lady in great distress of mind insisted to Mr. Wells, that the story of the witness was a fabrication, that she had never seen the man but once before, and then he came with the plaintiff to her residence for the purpose of purchasing a horse; that she, with the two men, talked about the price of the animal for some time, and they left. Unfortunately for her there was no other person present. Mr. Wells had no recollection of having met the witness before; and yet his countenance was familiar to him. The more he studied the features of the man, the more he was convinced he had somewhere met him before.

Suddenly it occurred to the puzzled lawyer that about the time when the fellow pretended he heard this conversation between the plaintiff and the lady, he was attending court at Angelica, and that a man bearing a strong resemblance to the witness was tried, convicted, and sentenced to jail for some offense. Mr. Wells believed the witness to be that person. But how could he make this appear? If he could do so, his client would succeed; if not, then she must be disastrously defeated. A moment's reflection decided his plan of action. After a close cross-

examination of the witness, in which nothing favorable to his client was elicited, the plaintiff rested in triumph. Before opening the cause for the defendant, Mr. Wells begged the indulgence of the court for a few moments, for consultation. He immediately despatched a trusty person to Angelica with a subpoena for the sheriff of Allegany County, and for a copy of the record of the witness's conviction from the clerk of that county. He then proceeded to open the defense to the jury, and of course, he occupied considerable time. When he had finished his opening remarks, it was night, and the hour for the adjournment of court had come. The next day, before the trial was concluded, the sheriff of Allegany, and the record of conviction were in court. The first, established the identity of the witness, the second, the fact that he was in jail at the very time he pretended he heard the admission of the lady.

This of course turned the tables, and the lady was triumphant. To the young lawyer, the result of this case was very gratifying, and added much to his reputation. Applying himself with untiring industry to his profession, he soon attained a very extensive practice, not only in Steuben, but in the adjoining counties. Among the lawyers practicing at the Steuben bar, Mr. Wells commenced his practice, were Vincent Matthews, William B. Rochester, Edward Howell, Daniel Cruger, General Haight, Mr. Woods; names which distinguished and adorned the bar. Soon after, Mr. Matthews removed to Rochester. Early in 1823, Mr. Rochester was appointed a circuit judge, and Mr. Cruger was in Congress. Thus, many formidable competitors were removed, leaving Mr. Wells a more open field of labor.

In October, 1824, he was appointed District-Attorney of Steuben County; an appointment which was highly complimentary to him as a lawyer. His predecessor was Daniel Cruger, who was distinguished throughout western New York as a lawyer and writer,

eminent in Congress for legislative abilities of high order, and a politician of indomitable energy and power. His life appears in another part of these sketches.

Soon after Judge Wells was appointed District-Attorney, a case occurred which called into action all his professional and intellectual powers. It was the well known case of the *People v. Douglas*. The defendant in that case was charged with having murdered a citizen of Steuben county by the name of Ives, under circumstances of great atrocity and cruelty. The victim was found in a piece of woods mortally wounded, in a speechless and dying condition. Who the perpetrator of the foul crime was, remained for some time unknown. At length suspicion pointed to Douglas; he was arrested, indicted, and in January, 1825, brought to trial. The matters relied upon for convicting him were merely circumstantial, but they pointed to him as the guilty man. The prisoner had many friends, and some means. He prepared for a vigorous and determined defense. Hon. Edward Howell, Zibra A. Lealand, and S. S. Strong, Esqs., of Bath, were retained to defend him, while the prosecution was of course conducted by Judge Wells. The trial occupied several days, and was exceedingly interesting. Hon. William B. Rochester presided, assisted by Hon. James Norton, then first judge of Steuben county. Every effort was made to save Douglas which his eloquent and able advocates could use. Many abstruse and difficult questions of law arose, and were discussed, many thrilling circumstances developed, in all of which Mr. Wells exhibited ability and learning equal to the occasion.

Though he did not possess the highest order of talent, yet his mind was well-balanced, strong, and well stored with the learning of his profession. Nor was he an easy and fluent speaker; but his calm judgment, good taste, and ready memory rendered him



convincing and interesting. His argument to the jury was regarded as an able and powerful effort, and the accused was convicted. But on the trial, a circumstance occurred which set aside the verdict of the jury, and gave him a new hearing. While the trial was in progress, during one of its recesses, the jury visited a place where spirituous liquors were sold, and partook of refreshments, some of them drank intoxicating liquors, though not enough to affect them in the least. But the counsel for Douglas alleged this act of the jurors as a ground of error. The case was carried to the General Term of the Supreme Court, and on the 25th of February, 1825, it came on for argument at Albany: the conviction was set aside, and a new trial granted to the prisoner. This case is reported in the 4th of Cowen.

In due time the new trial took place; the counsel for Douglas again interposed a powerful defense. The dangerous tendency of circumstantial evidence was duly urged to the jury. A few years previous to this trial, a work entitled "Theory of Presumptive Proof," appeared in the legal world. It was a profound and able dissertation against this kind of evidence, and in the language of Judge Livingston it had furnished many criminals with a ready magazine of defensive armor.

This work was used with power and ability on the trial of Douglas; its argument and theory, as well as that of the defendant's counsel, was met by the firm, clear, and flexible logic of Wells. The jury were made to understand that circumstantial evidence is often more convincing than positive proof; as witnesses may be mistaken or mislead, whereas a concatenation and fitness of many circumstances, made out by different witnesses, can seldom be mistaken, or fail to elicit the truth, and that although such evidence should be received with caution, nevertheless, circumstances are often so strong as to amount to satisfactory proof. And thus it was in

the case of Douglas ; no eye save Omniscience witnessed the deed : but there was a train of circumstances which pointed indubitably to his guilt. He was therefore convicted and executed. In the discharge of his official duties, Judge Wells was called upon to conduct several important prosecutions for the people during his term of office, and he was successful in most of them. He never had an indictment quashed or set aside, notwithstanding the great technicality of those instruments, and the care required in drafting them. He continued to discharge the duties of District-Attorney until the year 1829, when his increasing civil business compelled him to resign. Hon. Edward Howell was appointed in his place.

Mr. Howell is a resident of Bath, and the oldest member of the Steuben bar. Several years ago he retired from a large and distinguished practice. His career as District-Attorney, representative in Congress, his weight of character at the bar and in private life, his example as a Christian gentleman, has caused the esteem and regard of all to follow him into retirement.

After practicing at Bath ten years, Judge Wells removed to Penn Yan, where he continued to practice with success and distinction until elected a justice of the Supreme Court. As a lawyer, he was not one of those

“ Who pit the brains against the heart,  
Gloss misdeeds—and trifle with great truths.”

At the bar, he gained the attention of the court and jury by the calm, candid manner in which he presented his case. Though not a rapid thinker, though sometimes slow in coming to conclusions, yet such was the perfect preparation which he gave his cases, that he was always formidable as an antagonist. He was like a heavy piece of artillery, not easily changed about, but always well and effectually aimed. Courteous and composed in his manner, when he arose to discuss a legal question or address a jury, he al-

ways commanded respect and attention. And yet, as has been before stated, he was not an eloquent speaker, not one of those who engage the fancy of their hearers, without affecting their understanding. His arguments were solid and plain, bearing directly upon the point. He was once engaged in the trial of an important cause, at Waterloo, in which the counsel opposed to him, made an exhibition of his eloquence, and, in his conceit, a sarcastic allusion to the plain speaking of his opponent. In his reply, Mr. Wells simply remarked that he never attempted the high flights of oratory which the counsel opposed to him did; and he could only say of him as Junius did of the king, "The feathers that adorn him support his flight; strip him of his plumage and you fix him to the earth," and that he should endeavor, in a quiet way, to take some of the gentleman's plumage from him, just enough, he trusted, to keep his good friend out of the clouds; and he succeeded to the admiration of all present.

The constitution which was formed in the convention of 1846, made a radical change in the judicial system of the State. It provided for the election of judges by the people; it abolished the Court of Chancery, and gave equity powers to the Supreme Court; it annulled the old distinctions between actions, and provided for a Code of Procedure which abrogated all the nice mathematical rules which governed "the mutual altercation of parties," known as the pleadings in a suit, and which had existed for ages. At first, the bar beheld these sweeping innovations with dismay. The Court of Chancery had come down from the days of the *Aula Regia*; it had been sustained in England through the reign of every monarch from Henry II., to Victoria; while the office of chancellor had existed from the days of Maurice, in the reign of William the Conqueror, to the present time; its powers and duties gradually merging from the mere keeper of the great seal, to the highest judicial office in the nation;

and in this country, from the establishment of a colonial government, to the days of Walworth, who saw it pass away with its honors and dignities. The Court of Chancery was one of the great tribunals of the State ; its power arising chiefly from supplying the defects of the common law by giving a remedy in a class of cases, for which that law provided none, and by disregarding certain arbitrary and absurd rules of the law courts. Thus it possessed many advantages, in a country like this. But it had become in some respects a tedious and expensive piece of legal machinery, with its chancellor, vice-chancellor, its masters, examiners, exception masters, taxing masters, &c. These offices were all abolished, and the new judges were given equity power.

An elective judiciary was regarded as the most dangerous innovation of the new constitution. "The character, influence, and position of American judges, are unlike those of any other nation. In many respects, their official influence is unbounded. They come more directly in contact with the people than the English or French judges, and thus their influence extends beyond the limits of courts. In the recreation of private life, as well as the turmoil of public business, abroad and in legislative assemblies, the judge is constantly surrounded by men, who are accustomed to regard his intelligence as superior to their own ; and having exercised his power in the decision of causes, he continues to influence the habits of thought and the character of the individuals who surround him."

It was urged, that to bring the judiciary within the range of politicians, and party managers, would tend to its corruption, would render the judges dependent upon partizan manipulators. But fortunately, the selection of judges, is now almost exclusively committed to the lawyers ; and as has been well said, "When the people are intoxicated by the impetuosity of partizan zeal, or of any ephemeral excitement, they are



checked by the almost invisible influence of its legal counselors. Besides, the judge must be a lawyer, who, independently of the veneration and respect for the law, for regularity, and order, which he contracted in the study of his profession, derives an additional desire to maintain those legal attainments, and that high character, which commended him to his professional brethren, and which thus elevated him to a distinguished rank among his fellow citizens." And thus the judiciary is silently, but powerfully protected. Against the appointment of judges, it was urged that an ambitious executive, to perpetuate his own power, and promote his designs, could appoint corrupt and inefficient judges, on party grounds, or remove them, to subserve party interests, or prejudices. Able and pure judicial officers, could be removed to promote the interests of demagogues. Hence, it is most prudent and safe to intrust the judiciary to the many, rather than the one man power.

In July, 1847, the first judicial election under the new constitution took place. In the seventh judicial district, Thomas A. Johnson, of Corning, Henry Wells, of Penn Yan, Samuel L. Selden, of Rochester, and John Maynard, of Auburn, were elected justices of the Supreme Court. These gentlemen were lawyers of the highest and purest professional character. As they had adorned the bar with their learning and talents, they added lustre to a bench, which, since the adoption of the first constitution had been the admiration of the nation and the world; a bench, whose opinions are unquestioned authority wherever judicial decisions and opinions are known or respected. For twenty-two years and over the judges of the seventh judicial district have upheld the learning, the dignity, and purity of the Supreme Court of the State of New York, and what has been said of these judges, may well be said of those who at this time occupy the bench of the State; and thus an elective judiciary has

been a success and a triumph in the State of New York.

Judge Wells discharged the duties of a justice of the Supreme Court, nearly twenty-one years. The legal reports of the State bear ample testimony to his ability and research. In the language of another, "He entered upon the discharge of his duties with great industry and directness of purpose, and the student of the earlier volumes of *Barbour's* and *Howard's Reports* will find the traces of his judicial labors to be quite as numerous, and quite as valuable as those of any other member of the court. His well considered and well reasoned opinions, both upon new questions of practice, and upon questions of principles of law, may be reckoned by the hundreds, and his contributions thus made to our judicial lore would in the aggregate fill volumes. For clearness of expression, thoroughness of discussion, for all practical purposes, calmness, impartiality, and all absence of pretension or show, they are certainly above mediocrity. His opinion of the leading case of *Field v. The Mayor of New York*, may be cited as a fair illustration of his manner in this particular. It settled a new and important question by language just sufficient to express, in no ambiguous terms, the views of the court, and to indicate clearly, the limits and boundaries of the decision; and did all this, with a citation of authorities, not ostentatious, but sufficient to render his reasoning impregnable."

His decisions were distinguished not so much by boldness and excursiveness, as by clearness, steadiness, justice and right. They derived their strength from that fairness, rectitude and simplicity, that love of the true and the useful which entered so largely into his moral constitution. Accordingly they are characterized by impartiality, and graduated by an independence, which placed him far above the reach of influence from any source, and beyond the corruption of politics, or the regard of party. He had

strong partizan sentiments, and adhered to them with legitimate firmness. But, on the bench, in the discharge of his judicial duties, party, politics, and friends were alike forgotten, and he stood the High Priest of the law, in whose censer unhallowed incense never burned.

The modest firmness with which Judge Wells adhered to his opinions, is exhibited in the case of *Newell v. The People*, in the Court of Appeals. The case involved doubtful questions of law, and attracted public notice. He dissented from the opinion of all the members of the court, standing entirely alone, and wrote an opinion of which the following is the concluding part :

“In the conclusions to which I have arrived, I regret to find myself standing alone among the members of the court of *dernier resort*, who take part in this decision. This circumstance, perhaps, should lead to a distrust of my own judgment, even if it failed to shake my confidence in the correctness of the views I have expressed. However this may be, I yield to the decision, if not willingly, yet respectfully.”

He was in every sense, whether at the bar, on the bench, or in private life, the true gentleman. And he did much to establish those agreeable amenities which now exist between the bench and the bar. The younger members of the profession will remember with pleasure the kindness, suavity and patience with which he listened to their first forensic efforts. Many who came, conscious of ability, but with shrinking timidity, were encouraged by him—their mental resources drawn out, and they were led up to a confidence and self-possession which now sustains them in the collisions of professional strife.

The faults with which, as a judge, he was charged, were principally that he was too slow in the dispatch of business at the circuit, and that he did not possess that rapidity of thought which was necessary for a

judge at *nisi prius*. Without doubt there were some grounds for this complaint; and yet the correctness with which he disposed of business, was an ample offset for this fault; and it is remarkable that his decisions made on the trial of causes, were seldom reversed by the appellate court.

His repeated election by the people sufficiently attests the esteem and confidence in which he was held in the district, and the record of those frequent elections, is the highest encomium that can be paid to his memory.

Judge Wells died at Penn Yan on the seventh day of March, 1868, in the seventy-fourth year of his age. Mrs. Wells survives him. Their family consisted of nine children—two sons and seven daughters. Of those, four daughters only are living. They are Mrs. T. B. Hamilton, Mrs. T. A. Johnson, Mrs. S. B. Robbins, and Mrs. J. B. Welch. The late Samuel H. Wells, an eminent member of the Yates County bar, was a son of Judge Wells. He died on the eighteenth day of October, 1867, aged forty-eight years.

There is a melancholy interest attached to the history of Mr. Wells. Within the space of a few years, his wife and all his children, three in number, were taken from him by the hand of death. His wife, an amiable, lovely, and accomplished woman, to whom he was tenderly attached, died a few months previous to her husband. The stricken husband and father thus beheld his household treasures torn from him, his earthly idols snatched away. In the depths of his heart he felt that they could never come to him, but that he should soon go to them. A few weeks he struggled with his sorrows, a few weeks he lingered around his desolated home, and then followed his loved ones, "where the beautiful fade not away."

For many years, Judge Wells was a conscientious and an undeviating member of the Presbyterian Church. His religion, though strong and earnest, was in unison with his whole character, calm and



rational ; though of adamantine firmness, it was attractive, cheerful, lovely. He was a most severe and critical judge of his own conduct.

He looked upon religion as intended to regulate our intercourse with one another here, by adding the ordinary sanctions of temporal morality ; the rewards and punishment of another life, "according to the deeds done in the body." He was not satisfied with apparent religion, but was particularly interested in those instructions from the pulpit, which enjoin a deep, living, all pervading sense of Christian duty and responsibility ; and he united with his Christianity a deep interest in the history of good and great men, a veneration for enlightened legislators—for the majesty of the laws, a sympathy with philanthropists, a delight in efforts of intellect, consecrated to a good cause. For he possessed that congeniality with spiritual and lofty truths, without which, the evidences of religion work no deep conviction, without which, faith cannot assert her heartfelt, her glorious work.

## VINCENT MATHEWS.

His Birth.—Completes his Education with Noah Webster.—A Student in the Office of Colonel Robert Troup.—Burr.—Pendleton.—Yates.—Kent.—Spencer.—Contest for Governor between Judge Yates and George Clinton.—Called to the Bar.—Removes to Elmira.—Elected to the State Senate.—Appointed with Judge Emott to the Onondaga Commission.—Elected to Congress.—Appointed District-Attorney for Several Counties.—Daniel Cruger.—Mathews Removes to Bath.—His Success as a Lawyer.—Removes to Rochester.—His Popularity.—Elected to the Assembly.—Appointed District-Attorney for Monroe County.—His Politics.—His Manner as a Speaker.—His Character as a Lawyer.—Anecdote.—His Private Character.—Letter from the Young Lawyer.—Anecdote.—Scene of his Death.

VINCENT MATHEWS was born in the county of Orange, N. Y., June 29, 1766; hence his birth occurred in a solemn and eventful period; a period which determined the character of ages to come—when powerful evils were struggling for the mastery; when men gifted with great powers of thought and loftiness of sentiment—statesmen with broad and original views of human nature and society, imbued with self-denying patriotism, were summoned to the conflict. “Thus he was one of those through which one generation speaks its thoughts, feelings and appeals to another.”

At an early age he was sent to a popular and flourishing high school, at Middletown, N. Y. Although fully prepared, he did not enter college, but finished his classical education under the instruction of Noah Webster. The acquisitions of that profound and accomplished scholar rendered him a proper tutor for a mind like that which young Mathews possessed. The steady improvement, the cultivated and

refined taste, the severe industry, and the courteous manners of the pupil, soon endeared him to his revered instructor.

Having finished his classical studies, he went to New York, and in 1786 commenced the study of law in the office of Colonel Robert Troup, a highly distinguished lawyer and politician, an early and undeviating friend of Aaron Burr. Here Mr. Mathews came in contact with Pendleton, Judge, afterwards Governor, Yates, Chief Justice Morris, Burr, and others whose names are brilliant in the history of New York, and distinguished in the annals of our nation. He had thus rare opportunities for learning from men as well as from books. It was his privilege to see how justice was administered by Morris, Yates, Spencer, Kent and Savage. He had opportunities to see Hamilton and Burr in the forum, and to observe how forensic questions were managed by those master minds.

While pursuing his legal studies in New York, the celebrated gubernatorial election between Judge Yates and George Clinton took place, which, after a severe and bitter contest, resulted in the defeat of the former by a very small majority. The prominent partizans of Judge Yates were Hamilton, Burr, Troup and Duer.

Previous to this election, the Federal party, under the lead of Hamilton, was dominant in the State. But so great was the popularity of Mr. Clinton that the Federal leaders were obliged to combine all political elements against him in order to secure any hope of success; and this is the only instance in which Hamilton and Burr ever acted together politically. Although the latter opposed Mr. Clinton's election with all the strength and power of his mind and influence, yet, shortly after his election, the Governor tendered to Burr the office of Attorney-General, which, after much hesitation, he accepted. In those days, that office was one of the highest and most important

in the State. In the language of another, "the offer of Mr. Clinton was a tribute to the lawyer merely."

Among such men, and amid such scenes, Vincent Mathews prepared himself for the bar; and in the year 1790 he was admitted to practice. After his admission, he remained with Colonel Troup for some time. But, tempted by the many avenues of enterprise which a new country opens, in the year 1793 he removed to the county of Tioga, and became a resident of Elmira. Here, he soon entered into a successful practice. So rapidly did he gain the confidence of the public, that in the year 1796, he was chosen to represent the Western Senatorial district in the twentieth Senatorial session of the State. The Senate at this time numbered forty-three members, among whom were Ambrose Spencer, General Philip Schuyler, of revolutionary memory, Philip Livingston and Jacob Morris. In a legislative body composed of such men, Mr. Mathews took a respectable and influential position.

Soon after he retired from the Senate, a question of much difficulty and embarrassment arose in this State, concerning the military bounty lands in the county of Onondaga. After various abortive attempts at an adjustment of this difficulty, the Legislature of 1798 passed a law creating a special tribunal, to whom the matter was referred for hearing and settlement, known as the Onondaga Commission. Mr. Mathews and the late Hon. James Emott were commissioners. As this was, in its nature, a judicial office, it demanded much legal learning, and, therefore, these gentlemen were peculiarly well qualified to undertake the responsible and arduous duties thus conferred upon them. The successful and satisfactory manner in which they discharged their trust exhibited their ability and talent.

In the year 1809, Mr. Mathews was elected to the eleventh Congress, from the then fourteenth Congressional district, which consisted of Cayuga, Seneca,



Steuben, and Tioga Counties. General Erastus Root, of Delaware County, and subsequently so distinguished in the history of this State, was elected that year to Congress for the first time. Mr. Root represented that district for many years in succession.

General Mathews served but one term in Congress. After retiring from his congressional duties, he returned to the practice of his profession, and was appointed District-Attorney in the year 1812; a position which was then second only to that of Attorney-General. The sphere of his duties embraced several of the western counties, and represented a large and extensive field of official and professional labor. The manner in which he discharged the responsibilities of this office, greatly enlarged his professional reputation.

Daniel D. Tompkins was then Governor, and, as Mr. Mathews stood high in his regard, he tendered him the office of District-Attorney, as a tribute of respect to the accomplished lawyer and gentleman. His professional business increased to such an extent, that he was compelled to resign after holding the office a little over two years. Daniel Cruger, an eminent lawyer then residing at Bath, was appointed in his place. General Mathews continued at Elmira until the year 1816, when, at the solicitation of many friends in the county of Steuben, he removed to Bath, then, as now, one of the most attractive villages in the State. Here his popularity continued to increase, and he soon became one of the most distinguished lawyers in western New York. He continued to practice at Bath for several years; but in 1821, attracted by the many advantages which Rochester was then developing, he removed to that place, and continued there during the remainder of his life.

His reputation as a lawyer went before him, and he immediately entered into a large and flourishing practice. At this time he was fifty-five years old, in the plenitude of his mental powers, with a constitu-

tion naturally strong and vigorous, unimpaired by any excesses in youth, or manhood; he was well prepared for the scene of activity and labor which now lay before him. His untiring industry, his deep and philosophic research, his singular accuracy, his vigorous grasp of analysis, his clearness and force of conception, need no other comment or proof, than his early and continued eminence in a profession, which offers no prize to genius unaccompanied by application, and whose treasures are locked up in books, which hold out no attraction to imagination or taste, and which can only interest a mind disposed to patient and intense exertion.

General Matthews represented Monroe county in the Legislature of 1826. That body, was one of the ablest ever convened in the State. Samuel Young, of Saratoga, was Speaker, and, perhaps, no man ever discharged the duties of that conspicuous office with more ability, dignity, and brilliancy, than did this distinguished personage. He was an accomplished scholar, a close, learned, and accurate lawyer, a skillful, eloquent, and persuasive debater, a vigorous and eloquent writer; at once the sword, the shield, and ornament of his party. Among the many works which he has left, none have distinguished him more than his celebrated report on internal improvements, submitted by him to the Senate of this State in 1839, as Chairman of the Committee on Finance. This report is distinguished not only for the grace, beauty, and eloquence of its diction, but for its bitter and sarcastic attack upon the various schemes of internal improvements, then extant in the State.

Between Colonel Young and Mr. Matthews there existed a warm personal friendship, although they at times differed in politics. The office of District-Attorney being about to become vacant in Monroe County, by the expiration of the official term of Timothy Child, General Matthews was solicited to accept that office, and in 1831, received his appointment.

He discharged the duties of this office with all the fidelity, skill and ability which the public expected from a man of his learning and experience at the bar.

After holding this position about two years, he resigned, in consequence of the large increase of his civil business. This was the last public position which he ever held. Vincent Mathews never was a politician. His taste did not lead him into the devious paths of politics. His attachment to principle, his undeviating love of religion, protected him from the deteriorating influence of public station and the rage of parties.

Passion for the political arena is, undoubtedly, one of the great evils of the age. It calls out hosts of contestants for a few places, and encourages a bold and unblushing impudence in pursuit of personal elevation, by men of little capacity to discharge the duties of the places they seek. It opens a theater where little great men assume the habiliments of superiority, and mount some "bad eminence" for a brief period, only to be pushed into oblivion by some struggler beneath, who, in his turn, perches upon the slippery pedestal to meet the doom of his predecessor. Who can wonder that a mind like that of General Mathews should turn in disgust from such scenes?

He continued to discharge the duties of his profession, until he became the oldest practicing lawyer in western New York, having practiced fifty-five years without interruption, excepting his official terms. He died on the 26th day of September, 1846, in the eightieth year of his age; "continuing warm in his attachment to his profession, and industrious in the research and study it demands, up to the very last, ceasing his labors only with his life."

His sagacious, profound and philosophical mind found in the science of law an intellectual aliment, which sustained and invigorated his mental powers,

rendering them bright and active at a very advanced age.

He was not what might be termed an eloquent man, not even a fluent speaker, and yet courts and juries ever listened to him with profound attention. His manner, as a speaker, was unassuming, his language unvarnished, devoid of tropes and figures; but, like St. Paul, when he "stretched forth the hand" to speak, he often persuaded many a modern Agrippa to agree with him.

In his practice he was open, bold and liberal—a legal gladiator—wielding a keen, polished and powerful blade, but never the secret dagger. His deep abhorrence of guilt rendered him a powerful prosecutor, but not a strong defender, unless he believed in the innocence of his client. Before undertaking the defense of the accused, he always exhausted every effort to ascertain whether he was really guilty.

The following circumstance illustrates the keenness with which he tested clients charged with crime: A man who was accused of murdering his wife, sought to retain Mr. M. as his counsel. "The circumstances are against you," said the lawyer, "and I dislike very much to undertake your defense; but if I believed you innocent, I would not hesitate." The man asserted his innocence with great vehemence, but his words did not quite convince the sagacious counselor.

"I have two ways of defending a man charged with crime. If I think him innocent, I trust very much to that, and the difficulty of fabricating evidence that will convict. But, if I think him guilty, if I undertake his case at all, I make every effort in my power, and leave nothing undone which may tend to save him. Now, sir, which course shall I pursue in your case?" said General Mathews, fixing his eye keenly upon the man.

"I—I—think that you had better not leave anything undone," said he.



This was sufficient ; the man found other counsel.

Such was the confidence of the profession in Mr. Mathews' knowledge of the law, that a large part of his practice consisted in preparing written opinions on important questions of law. These opinions were known to be the result of great mental action, of much research, and of large liberal thinking.

He once received a letter from a very young lawyer residing in a country town, asking his opinion on a question which the young man wished solved. The letter did not contain the usual fee ; but it concluded in these words :

“ If you will send me your opinion on this question, I will in return send you mine on any legal question upon which you shall desire it.”

After reading the letter, turning to his partner, he said :

“ See here, we shall soon have an opinion ; an opinion, sir,” and then, much amused, read the letter aloud, after which, he sat down, prepared an excellent opinion, and sent it to the young man, thanking him for his offer of assistance.

He was distinguished for his domestic and social qualities. His own fireside was to him the dearest place on earth. As a husband and father, he was tender, considerate and indulgent. His conversation was of the most agreeable kind ; and intellectual men and women grew more intellectual in his society. He possessed the rare faculty of eliciting the strong points in the person's character with whom he conversed. Years did not dim the sunlight of his social and mental powers, or detract anything from the suavity of his manners.

As old age came upon him, it brought no asperities to his disposition, no irascibility to his nature. It seemed rather to temper his mind, “ just as the soft atmosphere of declining summer communicates its own tender tranquility to every object and scene viewed

through it." For many years he was one of the wardens of St. Luke's Church, Rochester.

General Mathews was, in every sense of the word, a pious man. His piety was a deep sentiment. "It was warm, but not heated; earnest, but tranquil; a principle, not an impulse; the air which he breathed, not a tempestuous blast, giving occasional violence to his emotions." His heart was ever warmed by a sacred fire from above, and in all the trials of life he was sustained by a firm reliance upon Him to whom "all hearts are open, all desires known," and hence the approach of death had no terrors for him.

"Like a shadow thrown  
Softly and sweetly from a passing cloud,  
Death fell upon him."

A distinguished lawyer, still a resident of Rochester, and once the law partner of Mr. Mathews, relates a touching incident which occurred the night but one before he died. This gentleman watched with him until past midnight, during which time the venerable sufferer slept sweetly as an infant. Suddenly he awoke, and taking the hand of his friend, he said:

"I have had a pleasant sleep, and have dreamed of bright, good, joyous beings, but that was a dream. Come, talk to me, tell me about dear old Cooperstown, and of our friends there; tell me all about them."

This request was granted, and in the silence and stillness of night, beguiling its long vigils, the story of other days was repeated, the sanctuary of tender memories opened. The dying lawyer listened, and as the theme went on, his countenance glowed with pleasure, and his eyes flashed with pleasant radiance. Suddenly interrupting his friend, he desired him to call his daughter, who was peculiarly dear to him, and who loved and venerated him with all that beautiful affection which only a much loved daughter can feel for such a father.

“My daughter,” said he, “Mr. Husband has been talking so kindly to me of our old friends, that I know you would enjoy hearing him; and so I have sent for you.”

Fervently kissing his pallid lips she knelt by his bedside, and holding his thin emaciated hand in hers, the story was resumed, and thus an hour wore away. Death was hovering near. Angels were waiting to convey the earth worn pilgrim to eternal rest. The gifted soul, on the verge of eternity, turning its last look on all it was leaving here, the aged face illumined by coming joys, the kneeling daughter, the cherished friend, bending tenderly over the bed of death, speaking words that brought up pleasant memoirs of the past, formed a group worthy the pencil of Raphael, the chisel of Phidias or Angelo. It was indeed

The chamber where the good man meets his fate,  
Quite on the verge of heaven.

## JOHN YOUNG.

Incidents in his Early Life.—His Parents.—Love of Knowledge.—Self-Taught in the Classics.—Becomes a Teacher.—Amusing Anecdote.—Vaulting Ambition Overleaping Itself.—Determined to Prepare for the Bar.—Commences his Legal Studies.—Supports Himself by Teaching.—Admitted to the Livingston Common Pleas.—Charles H. Carrol.—The Case of Miss Saterlie *v.* Windsor.—In Danger of a Disastrous Defeat.—A Successful Cross-examination and Brilliant Speech.—Saves his Client.—His Marriage.—His Early Politics.—Joins the Anti-Masons.—Elected to the Assembly.—Francis Granger.—William H. Maynard.—Two Future Governors in the Legislature of 1832.—His Speech in Opposition to Mr. Van Duzer.—Retires from the Legislature.—Devotes his Attention to his Profession.—The Case of the House Burners.—A. A. Bennett.—Mr. Young Nominated.—Elected to Congress.—His Congressional Career.—Retires from Congress.—Luther C. Peck.—Forms a Partnership with General Wood.—Again Nominated to the Assembly.—His Brilliant Legislative Career.—Becomes the Opponent of Horatio Seymour.—Great Debate Between Them.—Mr. Young as a Speaker.—Becomes the Leader of the Whigs in the State.—Returned to the Legislature.—Speech on the Mexican War.—Nominated for Governor.—His First Message.—High Reaching Buckingham Grows Circumspect.—His Administration.—Anecdote.—Appointed Assistant Treasurer.—His Death.—Reflections.

THE distinguished position which John Young occupied at the bar as a legislator and statesman, renders his name conspicuous in the history of the State. "Bold, skillful, and determined, he gave character to the political party," which in the State of New York acknowledged him as its leader. He did more. When that party was defeated and prostrated in the great conflict of 1844, by his ability as a legislative debater and tactician, by his stirring speeches in popular assemblies, he reformed its broken columns, lifted its trailing banner, infused new courage into its despondent cohorts, and finally led it to victory. He is charged, and perhaps justly, with many faults,



mistakes, and errors, for at present his public career will be subjected to the lights and shadows of the political atmosphere through which it is viewed. Happily for such men, for society, for history, the traces of passion, of rivalry, collision, and jealousy wear away by the lapse of time, are often forgotten in the requiem for the dead.

John Young was born in the State of Vermont, on the twelfth day of June, 1802. His father was Thomas Young, who removed with his family to Conesus, Livingston county, when John was but eight years of age. He was an innkeeper by occupation, and in early life was distinguished for enterprise and industry, and always for his irreproachable and manly character. Mrs. Young, the mother of John, was a woman possessed of those sterling traits of character, those strong mental qualities and heroic virtues which distinguished many of the pioneer wives and mothers.

John was the youngest of three brothers. At an early age he began to develop a mind which gave his friends high hopes for his future success in life. His mother read with pleasure and profit works of gifted authors and accomplished scholars. Thus she was qualified to exercise excellent taste and judgment in the selection of books for her boy. Accordingly, she placed in his hands productions which tended to enlarge and liberalize his mind. When but ten years of age he had read of Aristides the Just, of Themistocles, with his Spartan virtues, of Brutus, and of the mother of Gracchi. Greece and Rome rose before him, and his youthful mind was fired with the eloquence of Demosthenes, the oratory which sprang native and vigorous amid the factions and freedom of the accomplished Athenians.

In that early day, the Columbian Orator, and the English Reader, works compiled from the most elegant American and English writers, were the principal reading books used in schools. Mrs. Young encour-

aged her son to commit large portions of these works to memory, and then repeat them to her while she carefully corrected every error in pronunciation and period. This mental occupation was almost invaluable to him in forming his style of speaking and writing in after life.

The circumstances of his father did not admit of his receiving those advantages of education which his mind demanded. The only institution of learning to which he was admitted, was the common school of Conesus. But the growth of such a mind as John Young possessed, could not be retarded by the want of advantages. It grasped after knowledge, with the same intuition which causes the tendril buried in darkness, to lift itself into the pervading bright life-giving sunbeam. What could not be taught him in the Conesus school, he studied with success by his father's fireside, with no other tutor but self-reliance, energy, and perseverance. He purchased the best classical works of the day, and devoted himself to them with such untiring industry, that in his humble home, far from academic halls, he became an excellent classical scholar, uniting with his acquirements that practical knowledge which prepared him to enter the theatre of life, a successful actor; and without which, apparatus or books, teachers, criticism, ancient language, and general literature are of little moment.

Indeed, without practical learning, fancy and logic may please, but they cannot move men profoundly and permanently. It is the practical, which in a speaker or writer suggests ideas, gives facility and energy of expression. It prompts "the thoughts that breathe and the words that burn," it excites those mysterious combinations of speech and thought, which send the speaker's soul through his hearers, breathes new life into old and faded truths, and causes an instantaneous gush of thought and feeling in the mind of the auditor. The world is full of impracticable educated men, who, like the solitary Crusoe, on a distant

island, possess rich, solid bars of gold, but whose value is useless.

“Like certain chintzes, calicoes, and gingham, they show finely in their first new gloss, but cannot stand the sun and rain, and assume a very sober aspect after washing day.” But he who seeks knowledge as did John Young, cannot fail to be practicable, for his mind is kept lively and active by being compelled to exert his energies—by the stir of the world around him, which acts upon his intellect like an invigorating breeze blowing away all the dust and rubbish, keeping his faculties in a healthy tone, when, perhaps, they would become feeble under the regimen of recluse scholars, and dealers in mere erudition.

At a very early age Mr. Young was fully prepared for a teacher of common schools; and in that profession, he soon acquired a reputation which gave him the choice of the schools in Livingston county. He once related to a friend at Albany, after a triumphant legislative contest, the following circumstance in his life, while teaching:

“One winter, while I was teaching in the town of Livonia,” said he, “my scholars accepted a challenge to meet a rival school at a spelling match. It was a great event in their lives—greater in mine, for I was their commander-in-chief, and the thought of defeat was like death to me; so I drilled my scholars in the spelling book, with untiring industry. The day of the contest came, and my pupils were victorious. The young men of the defeated school then challenged my boys to a wrestling match; the challenge was accepted, and the match immediately took place on the play grounds of the school, and my scholars won another victory. The exultation which I felt was only equaled by the triumph of my boys. I was Cæsar at Pharsalia, they my conquering troops. That would have been the proudest day of my life, had I not lost my laurels by accepting a challenge from my rival teacher, to decide the contest of the day by wrestling with him.

In the flush of two victories, I felt the strength of giants. But this contest ended by my being ingloriously thrown into, and covered up by a snow-bank, as a reward for my vaulting ambition, which in this case, surely overleaped itself. That day, however, was the epitome of the ambitions and struggles of life—one moment exultant with success, the next despondent with defeat.”

At the age of twenty-one, Mr. Young entered the office of A. A. Bennett, Esq., then a prominent lawyer practicing at East Avon, New York.

In those days, a clerkship of seven years was required of law students, before they could be admitted to a class for examination, unless classical studies had been regularly pursued, under some competent teacher, or the candidate was in possession of a diploma from some college. As Mr. Young had no certificate of classical studies, from a competent teacher, and had no diploma, he was compelled to struggle through a seven years' clerkship. Unwilling to be an expense to his father, he sustained himself through several years of this term, by teaching. At length he was invited by Ambrose Bennett, Esq., a leading lawyer of the Livingston bar, residing at Geneseo, to enter his office as a student. The offer was accepted, and Mr. Young became a resident of Geneseo for life. Through the influence of Mr. Bennett, he was admitted to the Livingston Common Pleas, after studying four years. The late Charles H. Carrol was then first judge of that court.

He was a man of ability, dignified and winning in his manners, a gentleman of the old school. In early life a scholar, whose attainments were polished by intercourse with a highly cultivated and refined society, in his mature years a lover and patron of progressive agriculture, an amiable, high-minded and valuable citizen, a Christian gentleman, an honor and an ornament to the bench of Livingston county. The Common Pleas possessed original jurisdiction,



and was a tribunal in which important civil actions were commenced and tried ; while it relieved the Circuit from a large amount of business, and led to a speedy termination of litigated suits, it also tended to a more strict and better education of lawyers in the trial of cases, than the loose, careless trials before referees, to which, owing to the crowded state of the Circuit calendars, the profession is now obliged to resort. After his admission to the Common Pleas, Mr. Young amply sustained himself by practicing in that court, and in the courts of justices of the peace. In these tribunals he evinced that legal ability, which subsequently led to the high distinction he attained at the bar.

In October, 1829, he was admitted to the Supreme Court, and at once entered into a practice which was lucrative and flattering to his professional ambition. He had been at the bar of the Supreme Court but a comparatively short time before he was conceded a high rank in the profession.

One of the early cases which greatly distinguished Mr. Young, was an action brought by a Miss Saterlie against Richard Windsor, for the breach of a marriage contract. Mr. Young conducted the action for the lady, and the late Judge Mullett appeared for the defendant. It was tried at Batavia. The defense admitted the promise and breach, but set up in defense of it, the unchaste and impure conduct of the lady after the engagement. Both parties belonged to influential families, who occupied high social positions, and as may well be supposed such an issue engendered the most bitter feelings. A large number of witnesses were examined, and the defendant succeeded in establishing by the testimony of a young man, the truth of the matters set up against the lady. There were other witnesses whose testimony tended to show corrupt conduct on her part. This brought the trial to a fearful point ; for the plaintiff and her friends to be defeated in such a case,

would be ruin to her, and disgrace to them ; and as the case stood when Mr. Mullett closed the examination of the young man, there seemed little hope for her. But on the cross examination, Mr. Young succeeded in drawing from the witness the fact that he was a discarded suitor of the lady, and that he had on one or two occasions, made certain threats, which exhibited his desire for revenge. The counsel also succeeded in entangling him in the second relation of his story, to such an extent, that it had the appearance of improbability. But after all, when the evidence closed, the case had an unpleasant appearance for the plaintiff.

Judge Mullett made a strong and powerful effort for the defense. It combined the eloquence of reason, of sympathy and passion. It was such an effort as drew from Mr. Burke his celebrated and beautiful panegyric on the eloquence of Sheridan, when those brilliant orators were opposed to each other on a State trial.

Mr. Young saw the effect which Mr. Mullett's address had on the jury, and he prepared himself to overcome it. He commenced by extolling the speech of his adversary in the highest terms. "In the language of another," said he, "my antagonist has used every species of rhetoric, every kind of eloquence. Whatever the acuteness of the bar, the solidity of the judgment seat, and the sacred morality of the pulpit, have hitherto furnished, nothing has equaled what we have heard to-day in this court room. But, gentlemen, my opponent is entitled to still higher credit.

"With no reliable evidence to sustain him in the defense of this man, he has invented a theory, which in less powerful hands, would have been but the stuff which dreams are made of, but filtered through his fine brain, it assumes something like reality. It will therefore be my duty to dissect this theory, and to ascertain what evidence there is in the case to sus-

tain it; and then to see what facts there are to warrant a verdict for this deeply injured young lady; for you are the unfettered, unlimited, and final judges of that question, and of the amount of damages you may think proper to give. Gentlemen, you have, thank God, a still higher power and duty—the power to examine and decide upon the credibility of the witnesses who have testified in this case, according to your best knowledge and observation;—in the light of experience and according to the laws of human actions and frailty. Exercise that power, gentlemen, sternly and impartially in this case (for I tell you there is perjury here) with the conviction that the eye of God is upon you, and my client is saved.”

Mr. Young then took up the case, and his effort was characterized by such power of mind, that it rendered him the peer of Williams, and Ogden Hoffman, as a jury lawyer.

The jury returned a very heavy verdict for the lady. A motion was made by the indefatigable Mullett for a new trial, which was denied by the court.

In the spring of 1833, Mr. Young was married to Miss Ellen Harris, an accomplished daughter of the late Campbell Harris, of York, Livingston county.

Early in life he was attracted to the political field. On attaining his majority, his preference directed him to the Democratic party. In the autumn of 1828, the Democrats of Livingston county nominated him for County Clerk. His opponent was the late Chauncey Bond, of Geneseo. During this canvass he ardently supported General Jackson for President, and such was his enthusiasm for “the old Hero” that he lost all interest in his own election. His party being in the minority in the county, he was, of course, defeated.

Some time previous to this election the abduction of William Morgan took place, and the anti-Masonic party sprang into a powerful existence. Mr. Young condemned the high-handed act of Morgan’s taking-

off, and shared in the general indignation which it created. His attachment to General Jackson prevented him from uniting his fortunes with the Anti-Masons. But in the fall of 1829 he identified himself with them, and adhered to their fortunes, through all their changes and vicissitudes, until they united with the old National Republicans and formed the Whig party.

In the fall of 1832, Mr. Young and George W. Patterson were elected members of Assembly from Livingston county. They took their seats in that body January 6th, 1833. The Anti-Masonic party in the Assembly was then led by Francis Granger, of Canandaigua, and in the Senate by William H. Maynard, of Utica.

Mr. Granger was distinguished by many splendid and showy attributes of mind and person, possessing those qualities which constitute a successful parliamentary leader. He had already represented the County of Ontario, with marked ability, in four successive legislative sessions. Subsequently, he was the candidate of his party for governor. For a long time he exerted an extensive influence in the politics of the State.

Mr. Maynard was the great intellectual light of the Senate—the Halifax of his party. As a lawyer, he was distinguished for the profundity of his learning,—the result of his industry. Accustomed to the long patient vigils of the scholar, and the ardent study of political philosophy, he was logical and exact.

In the different branches of the Legislature of 1832, two future governors of the State occupied seats; one of whom was William H. Seward, and the other John Young. The former was elevated from the gubernatorial chair to the Senate of the United States, and from thence to be prime minister of two presidential administrations. Both of these gentlemen, in 1833, were overshadowed by the talents, position and influence of Maynard and Granger. The



early death of the former opened a field for the splendid and powerful abilities of Mr. Seward, while the mental resources of John Young in the political arena, gradually removed all opposition in his way, and he grasped the highest honors in the Empire State.

In the Legislature of 1833, Mr. Young occasionally took part in the debates. Whenever he arose to address the House, he commanded respect and attention. His speech delivered in opposition to a resolution declaring that the charter of the United States Bank ought not to be renewed, exhibited a profound knowledge of the fiscal affairs of the nation, and gained him considerable reputation.

His speech in opposition to the bill introduced into the Assembly by Mr. Van Duzer, of Orange, increasing the salary of judicial officers, brought upon him the hostility of those interested in its passage, some of whom took measures for retaliation, which led to a singular and sharp contest. His ardent support of the Chenango Canal bill gained him many friends interested in that measure.

After retiring from the Assembly in the spring of 1833, he was not in the political field again for several years, preferring the solid honors of his profession to the precarious position and evanescent success of the politician, who to-day is lifted to the Pisga of his party, and to-morrow lies by the cold streams of Babylon, with none so poor as to do him reverence; or who, like the giant in the beautiful fable of Sisyphus, is fated to an eternal renovation of hope and disappointment.

Early in the year 1836, A. A. Bennett, Esq., then a resident of Lima, N. Y., was appointed District-Attorney of Livingston county. He was a powerful and indefatigable public prosecutor, and stood high at the bar. Soon after entering upon the duties of his office, several persons were indicted for the crime of arson, committed in one of the northern towns of the

county. The circumstances of the case created great public indignation and considerable excitement. Some of the persons who were charged were farmers, and men of good reputation. Mr. Young was retained for the defendants; the ability with which he conducted the defense will not soon be forgotten in the County of Livingston. The defendants were all discharged.

He possessed a polished sarcasm, but it was a weapon which he seldom wielded.

Mr. Bennett had the more original fancy,—a deeper pathos; though Mr. Young was no stranger to the pathetic; while he could follow an argument with a more sustained acuteness.

In the fall of 1836, Mr. Young was nominated by the Whigs of the thirtieth Congressional district as a candidate for member of Congress, to fill the vacancy occasioned by the resignation of Philo T. Fuller. He was elected, and took his seat in the twenty-fourth Congress, December 4, 1836. After retiring from that body, he returned to the duties of his profession, declining a re-nomination.

Luther C. Peck, then a resident of Pike, Allegany county, was nominated and elected a member of the twenty-fifth Congress. Mr. Peck was a member of the House of Representatives from his district four years, serving with distinguished ability, and leaving upon the record of its proceedings the indubitable evidence of his high capacity as a legislator and lawyer, as an orator and debater.

In the memorable contest of 1840, Mr. Young was, at the solicitation of the leaders of the Whig party in his Congressional district, again before the people as an aspirant for Congress. He was triumphantly elected, and on the 31st of May, 1841, took his seat as a member of the twenty-seventh Congress, at the extra session called by Mr. Tyler. This session continued until the 13th day of September, following. It again assembled on the 6th of December, 1841, and

adjourned on the 30th of August, 1842. It re-assembled on the 5th of December, 1842, and continued its session until March 3, 1843. This was Mr. Young's last service in the National Legislature. While in Congress he distinguished himself more by his labors in the committee room, and by his sagacious advice in regard to the movement and policy of the Whig party, than by the number and ability of his speeches. The Bank bills vetoed by Mr. Tyler,—the distribution of the proceeds of the public lands,—the tariff of 1842,—were the great questions of the day, and he participated in the discussion of them with an ability which reflected honor upon his party and his district.

On his return home from this Congress, he was publicly received by his friends, and partook of a public dinner at Geneseo. A large number of leading politicians of Livingston and Allegany counties were present. In a short address he alluded to the policy of Mr. Tyler, which evinced the disquiet he felt for the course pursued by him. "A short time ago," said he, "the country resounded with shouts for Tip and Tyler ; but the scene is changed."

Mr. Young, having formed a copartnership with his brother-in-law, General James Wood, Jr., of Geneseo, in company with that gentleman, he again returned to the practice of law. Such was their success, that Young & Wood became a leading law firm in western New York. It existed until after the senior partner was elected governor of the State. Since that event, General Wood has continued in practice, attaining a high and honorable position at the bar. During the recent civil war, as colonel of the renowned One hundred and thirty-sixth New York volunteers, he proved himself a gallant soldier. For his meritorious services, and bravery on the field, he was promoted to the rank of brigadier-general, serving until the war closed.

In the autumn of 1844, the Whigs of Livingston county again summoned Mr. Young from the duties

of his profession, and he was induced to accept the nomination for member of Assembly. His election was a matter of course. The powers of John Young as an orator and legislator, were never fully developed, until he entered the Legislature of 1845. Here he raised himself to an eminence, seldom attained in a legislative body, and from which he easily reached the executive chair, though compelled to contend with the ablest intellects of the State. Horatio Seymour was a member of that Legislature, and as the Democrats were in the ascendancy, he was elected speaker. Mr. Seymour was then attaining that brilliant reputation which has placed him among the most distinguished men of the nation.

In the year 1845, the most popular measure with the people of the State of New York, was the proposed convention for the amendment of the Constitution. It was claimed with much propriety, that there were many corruptions and abuses existing in the State, which would be eradicated by a convention, and the people, therefore, eagerly demanded the passage of a bill providing for this measure.

In the Legislature of that year the Democrats were divided into Radical and Conservative Democrat factions, which subsequently resulted in the great schism of Hunker and Barnburner. Between these factions, the Whigs held the balance of power. Mr. Young, who early understood the great popularity of the proposed convention, adopted that measure as a party policy, which he saw would lead to success. With one or two exceptions, the Whig members coincided with him. Under his lead and direction, no means were left untried which promised to widen the breach in the Democratic party in the House. His management was admirable and successful.

The Radicals had long been in favor of the proposed amendment to the Constitution, but did not desire a convention, while the Conservatives were in fact opposed to either convention or amendment.



When the question came before the Assembly, the Whigs voted against the proposed amendment, thus compelling the Radicals to insist upon a convention rather than encounter the unpopularity of opposing it. The bill for the convention could not pass without the assent of the Whigs, who, of course, would not consent to the passage of any measure which did not tend to strengthen them in the State. And thus the question of a convention was, for a long time, one of absorbing interest in this Legislature, leading to frequent and exciting debates, which brought Mr. Seymour and Mr. Young in collision; the discussion which took place between them has rarely been equaled for eloquence or ability, at least in the Legislature of New York.

It drew to the Capitol crowds of deeply interested people, creating as much interest at Albany, as did the great Senatorial debate between Webster and Hayne at Washington. Each was a chieftain of his party, and each contended for a prize, well worthy the ambition of such contestants. Both won distinguished honors, and it is not invidious to say, that Mr. Young in this debate placed himself among the great parliamentary orators of the State. In one of his speeches, he alluded to Mr. Seymour in the following language :

“I have a single word to say of him. There is much of him to cultivate for good. He has shown himself the possessor of high, commanding, brilliant talents, and if he would forget party, and turn aside his passion for power, and the narrow paths of party discipline, and tactics,—tear away the drapery he has thrown around himself, and stand out his own living self, breathing out the purposes of his own great and generous heart; I hope, I trust, I shall live to see him occupying the highest station which his ambition desires.” Mr. Seymour’s reply was equally happy, and his retort to the charge made against him by Mr.

Young, of love of party and party tactics, was keen and pointed.

In his speeches at the bar, in the Legislature, or in the popular assembly, Mr. Young usually avoided anything like an exordium, and endeavored to lead his audience by the shortest and most direct course to the real point under discussion. In no instance did he permit himself to make a lengthy effort. Hence his arguments were like a short polished and keen weapon, used with intensified force and power.

The convention bill finally passed the Assembly, on the twenty-second of April, 1845. The Senate concurred; it received the signature of Governor Wright and became a law. The passage of this bill was an auspicious day for John Young. It was the successful consummation of a policy which would have added lustre to the laurels of Pitt, Fox, Clay, or Webster. It did not aggrandize himself alone, but in the next gubernatorial election it tended largely to the success of the Whig party in the State.

In the fall of 1845, Mr. Young was returned to the Assembly. The Legislature of 1846, like its predecessor, contained some of the most eminent men in the State. Mr. Young was the Whig candidate for speaker, but as his party was in the minority, he was defeated, and W. C. Crain, of Herkimer, elected.

This session was not an important one, excepting as it served to keep alive those divisions in the Democratic party, which at a later period developed themselves into an open and fatal rupture.

Just as the Legislature was on the point of adjourning *sine die*, the intelligence reached Albany, that a collision had taken place between the forces of the United States and the Mexicans on the Rio Grande. On the introduction of a bill into the Assembly authorizing the governor to sustain the nation with men and arms, Mr. Young, in an eloquent speech, declared his intention to sustain the resolution, concluding in the following memorable language:

“The country is invaded, the rights of our citizens have been trampled upon, and I will sustain the country, right or wrong.”

These remarks were the subject of much comment and considerable censure. But as has been well said, “Mr. Young never regretted the utterance of them, and construed in the spirit in which they were uttered, as indicating the duty of the good citizen, to waive his individual opinion, when called upon by the action of government to support it against a foreign power—it is so near akin to patriotism, that it must find a response in the heart of every one who loves his country.” The great patriot who uttered the words, “Our country first, our country last, our country always,” was inspired by the same sentiment which prompted those celebrated words of Mr. Young.

In the Legislature of 1846, Mr. Young voted for the law abolishing distress for rent, and he unreservedly declared his willingness to afford the anti-renters such aid and protection as the Constitution vouchsafed to them. He even asserted his willingness to amend the Constitution to protect them still further, and indorsed the changes made in their favor in the convention of 1846.

Such was now the popularity of Mr. Young in the State, that in 1846, he became a prominent candidate of the Whigs for governor. Mr. Fillmore had been urged as a candidate, but it was well known that he did not desire the position.

On the twenty-third of September, 1846, the Whig State convention assembled in Utica. It was the scene of a singular, and what might be termed a three-cornered contest. The defections which subsequently dissolved that great party, here distinctly exhibited themselves, under the names of Conservative and Radical Whigs, or Silver Gray and Woolly Heads. The former were lead in the State by Mr. Fillmore, Luther Bradish, and John A. Collier; the latter by Mr. Seward, Mr. Weed, and others. There was also a

strong anti-rent element in the convention, the leader of which was Ira Harris.

Although the name of Mr. Fillmore was presented to the convention against his wishes, yet such was his great popularity that he was a powerful competitor. Mr. Young was the Radical candidate, and although there was no personal friendship between him and Mr. Seward, yet on this anti-rent question they agreed, and as the Radical leaders preferred Mr. Young to Mr. Harris, they strongly sustained the former. After balloting for a long time, the anti-renters yielded their preference for Mr. Harris. Mr. Young received the nomination for governor, and Hamilton Fish was nominated for lieutenant-governor. The Democrats renominated Silas Wright and Addison Gardiner. With such powerful candidates they were confident of success. The election resulted in the success of Mr. Young by eleven thousand majority, and in the defeat of Mr. Fish; the Democrats elected Mr. Gardiner, lieutenant-governor.

Mr. Young entered on the duties of his administration. His first message was distinguished for conciseness and brevity, yet it was regarded as a dignified and able State paper. On the question of the Mexican war, he reiterated the sentiments of his speech on that subject in the Legislature of 1846. It is said that before this message was sent to the Legislature, he submitted it to certain eminent Whigs, who strongly urged him to expunge that part of it which referred to the war; but he was inflexible, and it was read to the Legislature without amendment in that respect. The measures which it recommended met the approbation of the Whigs; while they were condemned only by the most violent and bitter Democrats. In his second annual message, he alluded to the Mexican war in much the same language as the former message.

During his administration the Legislature was principally engaged in preparing such laws as were



demanding by the new Constitution; and as that instrument had deprived the executive of nearly all the official patronage formerly attached to that office, he was relieved from the vast responsibility of his predecessors. In the appointment of the few officials which the new Constitution left to the governor, he declined the advice and counsel of leading Whigs who had hitherto had a controlling voice in these matters.

Soon after assuming the duties of his office, two leading Whigs called upon him for the purpose of influencing him on the question of executive appointment.

"Gentlemen," said he, after listening to their statements, "allow me to inform you that I am the governor of the State of New York."

"Are we to understand that you decline to listen to our suggestions in this matter?"

"Certainly," was the reply.

They withdrew.

"High-reaching Buckingham is growing circumspect," said one of them, as they descended the steps which led from the executive mansion.

"Yes," replied the other, "and his circumspection will send him to private life."

Among the first acts of his administration was the pardoning several anti-renters, who had been convicted and imprisoned during the administration of Governor Wright. In this act he incurred the displeasure of the Conservative wing of the Whig party, and the usual criticism and newspaper condemnations followed, which had the effect of strengthening his friends as well as his enemies, and thereby leaving the matter about equally balanced. The governor insisted that the offense of the convicts was merely political, and therefore called for the interposition of the pardoning power.

In the early part of his administration, the question of the extension of slavery to the territory to be

acquired from Mexico, began to be agitated ; and sanctioned by him resolutions were adopted in the Legislature instructing the Senators and Representatives from this State in Congress, to vote for the prohibition of slavery in such territory, thus evincing his views on a question, the settlement of which, subsequently, led to such a fearful arbitrament.

“His views with regard to the war with Mexico, his refusal to make his appointments in accordance with the wishes of Mr. Seward and his friends, were not satisfactory to one branch of the Whig party, and led to considerable feeling, though no open rupture took place. He did not desire a renomination ; consequently the harmony of the party was not disturbed by any considerations merely personal to himself,” though the feud between the Woolly Heads and the Silver Grays continued until the great Whig party became a thing of the past.

The popular manners of Governor Young, his entire freedom from all affected dignity and self-importance, the perfect ease with which he received all those who approached him, his possession of those traits which command respect, rendered him personally popular. In his character there was a lively vein of wit and humor, which in public or private life rendered him attractive ; and he knew how to pass “from grave to gay, from lively to severe,” with a facility rarely met.

Among the amusing incidents of his gubernatorial life, which he sometimes related with infinite relish, was the following :

One morning, while busily engaged in his room, a person was announced as Mr. ——, from Livingston county. The governor did not recognize the name, but, coming from Livingston county, he was admitted ; and a tall, gaunt, queer, but somewhat self-possessed individual entered the room.

“Good-morning, Mr.—I beg pardon—Governor

Young ; glad to see you ; how's your health now, and your family ?" said the man.

"Good morning, sir," said the governor, looking very inquisitively at the queer specimen before him.

"You don't know me, I see. Well, governor, I'm the chap you saved from State prison for being mixed up in that confounded affair about the buildings going up one night. My gracious ! what a speech you made for me. The way you bored for water was awful. I felt bad, but I didn't cry until after the jury did. You got me off slick as grease. Hard work ; got good pay, though, and"——

"My good friend," said the governor, interrupting him, "I am glad that you remember my services in your behalf ; but as I am in great haste, you must excuse me now."

"But, Governor, this is a business call, and business is business," said the fellow.

"Well, what is your business ?" said Mr. Young, growing impatient.

"Well, you see, I'm in for it again—I'm indicted for another affair, a little worse than the first one ; pretty sure to go up unless I have help ; and as I'm out on bail, I've come to you again to assist me ;—always stick to those that do well by me," said the fellow.

"But I am not practicing law now, and I cannot help you," said the governor.

"I understand, but you see as you lay over all the judges in the State now, and I am going to stand a conviction, cause I can't help it, I 'spose ; and the judge will send me to State prison, and now, Governor, the joke comes in ; when I am fairly in (I shan't mind that), you just come down with your pardon, and lay out that judge, and set the district-attorney whizzing. Don't you see, Mr.—I beg pardon, Governor—that you can save me this time a good deal easier than you did before, and I guess for less

money, but don't wait long with your pardon," said the fellow.

Mr. Young, greatly amused at the man's sincerity and pertinacity, assured him, that if he was convicted, he would look over the evidence, and see how the case appeared, and then he dismissed his visitor.

In the Whig National Convention of 1848, Mr. Young was a warm friend of General Taylor, but the distinguished public services, captivating and profound qualities of Mr. Clay, caused him to prefer that great statesman for president; and when, in 1849, Governor Young desired to be appointed assistant treasurer in the city of New York, a position then held by ex-Governor Bouck, he was opposed by the leaders of the Radical Whigs, his preference for Mr. Clay to General Taylor being made as a reason why he should not be appointed to any office under the new administration. But the man who had been so long familiar with the detail of politics, and who understood so well the intrigues of cabinets, was a match for his powerful opponents; and in July, 1849, he was appointed to the important office he sought. This was the last public station he ever occupied. He died in the city of New York in April, 1852, in the fiftieth year of his age.

Mrs. Young and four children survive him. The former resides at Geneseo, N. Y., respected and esteemed for many distinguishing virtues and amiable traits of character.

Thus we have seen John Young, the artificer of his own fortune, the solitary and humble student, the teacher, lawyer, legislator, and, finally, governor of the Empire State. Often eulogized and vituperated, but in all these phases of his life successful. At times displaying powers of oratory of which he seemed unconscious, and exhibiting legislative abilities that made him the brilliant leader of his party, the chieftain who restored its fallen fortunes; and if he was hated by many, he was admired by more.



As governor, his administration may not be celebrated for any striking policy, nor may it dazzle us by brilliant contrasts between its good and bad qualities ; between the vicisitudes of prosperous and adverse policies ; but apart from the censure of its enemies, and the commendations of its friends, the impartial historian will accord to it as much ability and eminence as had been awarded to the administrations of most of his predecessors. As has been well said, "the light which radiates from the life of a great and patriotic statesman is often dimmed by the mists which party conflict throws around it. But the blast which strikes him down, purifies the atmosphere which surrounded him in life, and it shines forth in bright examples and well earned renown.

## GEORGE HOSMER.

His Ancestry.—A Son of Dr. Timothy Hosmer.—Oliver Phelps.—Description of Western New York in Early Days.—First Court in Ontario County.—The Lawyers in Attendance.—The Trial.—Amusing Charge of Judge Timothy Hosmer to the Jury.—Highly Gratifying to the Ladies.—George Hosmer's Early Education.—Preparation for the Bar.—Admitted to Practice.—Opens Law Office at Avon.—Moses Hayden.—Hosmer Appointed District-Attorney.—Successful Practice of the Young Advocate.—Engaged in a Great Murder Trial at Batavia.—Defends the Murderers.—Singular Verdict.—Uncertainty of the Jury System.—Remarks of Luther C. Peck Concerning Petit Jurors.—Mr. Hosmer as an Advocate and Speaker.—Singular Defense of a Young Girl at Batavia.—Retained for the Plaintiff in the Great Case of *Pratt v. Price*.—John C. Spencer Opposed.—Speech of Mr. Hosmer.—Charles M. Lee.—John Dickson.—Judge Gardner.—His Character.—Hosmer Engaged in the Morgan Trials.—Defends Roberts, Editor of the Craftsman.—Hosmer's Speech to the Jury on Behalf of a Very Poor Client.—Money in the Jury Box.—Elected to the Legislature.—His Career in the Assembly.—Characteristics.—Death.

THE name of George Hosmer was for many years identified with the legal interests of western New York, and his career at the bar has passed into its history. He was a lawyer of eminent abilities, possessing many solid and shining acquirements, a mind naturally strong and comprehensive, improved by the usual classical studies, a critical acquaintance with English *belles lettres*, and a laborious and systematic study of the common and statute law. Hence, the high position which he attained in his profession was the legitimate and proper reward of real merit, of untiring industry, diligent research, and not the result of any adventitious circumstances. The wreath which he wore was not won in contests with plebeian competitors, for it was his fortune to commence and continue his professional struggles with those gigantic intellects which composed the bar of western New

York ; noble and generous rivals, who yielded him with cheerfulness and pride the honors he had achieved.

George Hosmer was born in Farmington, Conn., August 30th, 1781. He was a descendant of Colonel Thomas Hosmer, of Hawkworth, England, a strong and vigorous supporter of Cromwell ; sustaining him with undaunted valor in the field, and aiding in those deep laid ambitious schemes which elevated that singular man to the position of lord protector of England, and upholding the protectorate with all his power and influence. When at length the sun of Cromwell descended forever, and Charles II. returned "to his own again," Colonel Hosmer, with the fugitive regicides, Goff, Walley and Dixwell, was compelled to leave England and secure an asylum from royal vengeance in the wilds of New England. He settled at Middletown, Connecticut.

George was a nephew of Hon. Titus Hosmer, of Middletown, a distinguished scholar, statesman, judge and lawyer. The elegant poem or elegy on his death, written by the pen of Joel Barlow, will long be remembered as a beautiful and scholarly production. The father of the subject of this sketch was Timothy Hosmer, one of the earliest settlers of Ontario county, a man of liberal education, a physician by profession, and a true gentleman of the old school.

At the commencement of the revolutionary war, he entered the Continental army as surgeon of a Connecticut regiment, in which capacity he served during the war, with the exception of two years, during which time he served as surgeon on the staff of Washington. He was present at the battles of Monmouth, White Plains, Brandywine, Princeton and Trenton. At the execution of Andre he was one of the attending surgeons, and no event which he witnessed during the progress of the whole war made so deep and lasting an impression on his mind as did the death of that elegant and accomplished soldier. In after

years, while relating the circumstances of this execution, he was "often beguiled of his tears."

In October, 1798, he was appointed by Governor George Clinton, first judge of Ontario county. Oliver Phelps, with whom he came to western New York, had previously been appointed to that office, but such was the condition of the county that no courts were held or organized by Judge Phelps, and his many important business relations compelled him to resign, and Dr. Hosmer was appointed in his place. Mr. Phelps was a native of Windsor, Connecticut, and with Nathaniel Gorham was one of the earliest landholders in the then far off Genesee country. He was active, high-minded, enterprising and intelligent. When he first visited western New York, that now highly cultivated and splendid section of the State was an unbroken wilderness, save the few settlements or openings made by the Indians. But the sheen of its beautiful lakes and rivers, the legendary hunting grounds of the red man, and the natural beauty of the country, had many charms for the intrepid pioneer, and as if by prophetic vision he saw something of its future greatness, though he could not realize that within a period of time less than a century it would attain a position in civilization, wealth and refinement equal to realms known in history for ages.

Mr. Phelps first visited Geneva, than called Kanadesaga, in the year 1788. In the spring of 1789, under his auspices, a large company from Connecticut and Massachusetts commenced a settlement in the country of the Genesee; after encountering many hardships and adjusting many difficulties with rival companies and the Indians, a settlement was permanently commenced. Canandaigua, or Canadargua, as it was first called, was the headquarters of Mr. Phelps. The beautiful location of that village, or trading post as it was then, had been previously described by tourists and adventurers who had occasionally found their



way to this distant country. As early as 1765, a traveler by the name of Kirtland, visited Kanadesaga, or Geneva, and in a letter to Sir William Johnson, under whose auspices the journey was undertaken, he bitterly complained of the fare he found.

“Could I have plenty of fresh venison and bear’s flesh,” he said, “I could do without bread, y<sup>e</sup> staff of life; but to have little of either, and y<sup>e</sup> most part of it rotten, I think may be called coarse food.”

In another part of this letter, he says he finds “nothing but y<sup>e</sup> Indians here.” And this only a hundred and four years ago.

Soon after the settlements under Phelps and Gorham were commenced, several distinguished tourists from the Atlantic cities and from Europe, visited western New York, and the poetic description which they gave of the country attracted great attention. *The Gentleman’s Magazine*, a well known quarterly of much literary merit, then published in London, contains a letter written from Geneva in 1790, by a young nobleman, who made the tour of “these western wilds,” as he called the country.

“The scenery about Kanadesaga,” he says, “is beautiful and as enchanting as any Italian landscape, or the shores of classic seas, while the whole country about Canandaigua is as enchanting as the Vale of Tempe, and as beautiful as the garden of Hesperides. There are, however, but one or two families of whites at either place, to enjoy the Eden-like beauties of the situation.”

The county of Ontario was set off from Montgomery in the year 1789, and included all the territory known as the Geneeee country, and now known as western New York. Mr. Phelps was elected to Congress from Ontario county in the year 1803. He served in that body two years. After retiring from Congress, he embarked in certain speculations, which resulted disastrously, and he became greatly embarrassed, notwithstanding that his wealth was once estimated at a mill-

ion dollars. He died at Canandaigua in the year 1800. The names of Oliver Phelps and Nathaniel Gorham are indelibly inscribed in the history of western New York; while their descendants are known among the most respectable and distinguished citizens of the State.

Judge Hosmer presided at the first county court ever held in Ontario county. His associates were Charles Williamson and Enos Boughton. This court was held at Nathaniel Sanborn's hotel, in Canandaigua, November, 1794. Among the lawyers present were Vincent Mathews, James Wadsworth, John Wickham, and Thomas Morris. There were several causes on the calendar, but no jury cases were tried—the principal business being the organization of the court. The next term was held in June, 1795. At this court, occurred the first jury trial which ever took place west of Herkimer county. It was the trial of a man indicted for stealing a cow-bell. The culprit was defended by Vincent Mathews and Peter B. Porter; while the prosecution was conducted by Nathaniel W. Howell, afterwards Judge Howell. The cause was tried with all the adherence to strict legal rules, with all the conformity to great principles of justice, which characterizes legal proceedings in the most gorgeous temple of justice, or under the domes where law, in scholastic robes, has been for ages dispensed. After a close, legal contest, and an able charge to the jury from Judge Hosmer, the prisoner was acquitted. The first Circuit Court, and Court of Oyer and Terminer, held west of Montgomery county, took place at Patterson's tavern, Geneva, June, 1793. John Sloss Hobert, one of the three justices of the Supreme Court, appointed after the organization of the judiciary in 1777, presided. A grand jury was impaneled and charged, but no indictments were found.

Judge Hosmer was not bred to the bar, yet his strong, practical, good sense, his finished education, extensive reading, his love of justice and equity, rendered him well qualified for his judicial position, and

his decisions were always acceptable to the bar and the public. The following anecdote illustrates his natural love of justice :

During one of the terms of his court, a woman was brought to the bar for trial, on an indictment charging her with a violent assault and battery upon a man by the name of Scrope. The evidence developed the fact, that Scrope had intruded himself into the kitchen of the lady, and grossly insulted her. Seizing an old fashioned splint broom, a formidable weapon, by the way, she drove him from the house, inflicting several very severe blows upon his head with the broom, which considerably injured him.

The district-attorney, having proved the assault and the injury resulting from it, rested his case, confident that the woman would be convicted. Her counsel seemed to take this view of the case, and made but little effort to save her. Then came the charge of the judge ; he was, as we have seen, a gentleman of the olden time, too refined and chivalrous to see a lady convicted under such circumstances ; especially as he believed the acts of the complainant were a perfect justification for the assault.

“Gentlemen of the jury,” said he, “the evidence in this case, clearly shows that an assault and battery has been committed upon this man, and unless there is some justification for the assault, you must convict the defendant. But, gentlemen, in my view, there are extenuating circumstances in the case, which you must take into consideration. Among which, are the sex of the defendant, the place where the assault was committed, and the circumstances which led to the assault. Gentlemen, bear in mind that the kitchen is a woman’s empire, the broomstick a legalized, and therefore legitimate weapon, her honor the corner-stone of society, nay, its superstructure. The wretch who invades her empire and there wantonly insults her, should never complain if quick, heavy, repeated blows given with her proper weapon should in fury descend upon

his head. If he escapes with his life, he should make no other demonstration than thanking God for it. But when he goes further, when, as in this case, he asks redress from a jury; if there is a juror in the box who has a wife, mother, daughter, sister, or female friend of any kind, that cannot see in the provocation a justification of this act, and of the whole act, his name ought to be stricken from the jury box forever. Go out, gentlemen, and return with such a verdict as will not, when you go to your homes, bring upon you the condemnation of every virtuous woman."

This charge, although not entirely balanced by strict legal rules, rendered the judge very popular, especially with the ladies.

Having finished his classical education, George Hosmer entered the office of Hon. Nathaniel W. Howell, of Canandaigua, as a student at law. Judge Howell was then a prominent lawyer and jurist, whose life appears in another part of these sketches. Mr. Hosmer continued with Judge H. until he completed his legal studies, when he was duly admitted to the bar. He commenced practice at Canandaigua.

The first cause in which he was engaged, was tried before his father, who, during the trial, frequently forgetting the dignity which his son had acquired, would frequently say to him, "George, you are wrong;" "George, see here, you misapprehend the point;" and as the young lawyer became somewhat persistent, "George, sit down," said the judge, and he was obeyed.

After practicing at Canandaigua until the year 1808, Mr. Hosmer moved to Avon, opened an office, and commenced practice at that place, meeting with much success. After the commencement of the war with England, he accepted the position of aid to General Hall, and joined the American army on the western frontier.

After serving some time in the army, Mr. Hosmer's health becoming impaired, he resigned his commission



and returned to the practice of his profession, in which he rapidly arose to eminence.

In the year 1820, the county of Livingston was erected. Hon. Moses Hayden was immediately appointed first judge of the new county, and Mr. Hosmer district-attorney. At that period, district-attorneys were appointed by the Court of Common Pleas, and the most experienced and able members of the bar were always selected for that office. The position tendered to Mr. Hosmer in this instance, was highly complimentary to him as an advocate. He continued to discharge the duties of his office with marked ability untill 1824, when he was succeeded by the late Orlando Hastings, of Rochester, but who then resided in Genesee, and whose life appears in this work.

Mr. Hosmer was now in the zenith of his professional prosperity and success. He appeared in all the courts of western New York and was recognized as an able and successful lawyer, and an ornament to the bar. One of the earliest cases in which he appeared as counsel, was that of the People against the two Robertses—father and son—charged with the murder of J. A. Davis, a hotel keeper at Leroy. This trial took place at Batavia, and created great interest. The defense of Mr. Hosmer was considered able and ingenious, and won for him the highest commendations. The father was acquitted, but the son convicted.

In alluding to this trial in after years, Mr. Hosmer remarked that the result of this trial convinced him of the doubts and uncertainty of trials by jury, for, in this case, said he, “they hung the innocent man and acquitted the guilty one.”

The Hon. Luther C. Peck, now one of the oldest and most distinguished lawyers of the Livingston bar, once remarked, “if there is anything beyond the comprehension of Deity, it is the action and decision of a petit jury.”

De Tocqueville, the eminent French jurist and author, in commenting upon our jury system, while he admits the uncertainty of it, says :

“The jury contributes most powerfully to form the judgment, and to increase the natural intelligence of the American people. It may be regarded as a gratuitous public school, ever open, in which the juror learns to exercise his rights, enters into communication with those learned in the law, and thereby becomes practically acquainted with the laws of the country, which are brought within the reach of his capacity, by the efforts of the bar and the advice of the judge.”

As an advocate, Mr. Hosmer was eminently successful. His manner before a jury was impressive, and his language convincing. He was sometimes vehement, yet his vehemence was tempered to the occasion. Before the court alone, in the argument of purely legal questions, he was calm, deliberate, self-possessed, and always had his case fully and thoroughly prepared ; hence, he never failed to commend and retain the attention of the judge.

As a speaker in the popular assembly, he was always a favorite with the people, always drew their attention and attendance whenever he appeared before them. The strong sympathies of his nature were ever enlisted for his client, and, as was ever remarked of him, “Hosmer always thinks his own client in the right.” He often undertook the defense of persons charged with crime, prompted alone by his sympathy. On one occasion, while attending court at Batavia, he volunteered to defend a young girl who had been indicted for grand larceny, after the lawyer whom the court had appointed to defend her advised a plea of guilty. He was led to believe by the looks and manners of the girl that she was not really guilty. She had all the appearance of artless innocence, and when her lawyer proposed to enter her plea of guilt, there was a look about her that denied the plea.

“I cannot believe,” said Hosmer to the court, while begging for a few moments’ conversation with the prisoner before the plea was entered, “that such a casket contains corruption;” and after a short interview with the girl and her friends, he determined to defend her. She was charged with stealing silver spoons, and other silver-ware. The daughter of a poor and widowed mother, who lived at a distance, she had been bound to a wretch who cruelly misused her, overtaxing her strength, almost beyond her endurance, by excessive labor and unremitting toil. Her poor heart yearned for the humble home, the gentle and tender care of that mother who had often soothed the sorrows of her childhood, and clandestinely leaving her master, she sought her home.

Alone and on foot she commenced her weary journey. But her flight was soon discovered; the silver-ware was missed, she was pursued, overtaken, and brought back to her master. A part of the property was found secreted at the side of the road over which she had traveled. Such was the evidence elicited on the trial, on which the public prosecutor confidently expected the conviction of the poor girl. The situation of the prisoner, and all her sufferings, were adroitly drawn out, the character of her master placed before the jury, the absence of any proof that she had taken the property was strongly dwelt upon. Her attempted flight to her mother and its course, was touchingly described.

“She was not fleeing to conceal her guilt, as the public prosecutor contends,” said her counsel; “she was escaping from oppression, from a cruel and bitter fate, from a wretch whose heart is harder than the nether millstone, and who would turn the tears of the orphan into money. It is true that this paltry treasure was found near where this girl had passed, and this is all the account they can give of the matter. Gentlemen, until the prosecution prove that this girl placed it there, you must not convict her; nay, you will not

convict her, and the God of the fatherless will approve the verdict which will snatch this unsheltered lamb from a fate worse than death, and restore her to that mother whose life almost depends upon your decision.’’

The jury retired under the charge of the judge, and soon returned with a verdict of acquittal, which was received by the spectators and bar with great applause, notwithstanding the efforts of the court to repress it.

Among the many important civil cases in which Hosmer was retained, was that of Abner Pratt against Peter Price. Mr. Pratt was a lawyer practicing at Rush, in the county of Monroe, and Mr. Price was a judge of the Common Pleas of that county, and a man of considerable political and social standing. A bitter feud existed between these men, and upon a certain occasion, Judge Price said to a client of Mr. Pratt’s, “Yes, Pratt will collect your money, and then steal it, as he has often done for others,” or words to that effect.

Upon these words an action for defamation was commenced against the judge, which came on to be tried at a circuit court held at Rochester, April 28th, 1834, Hon. Addison Gardner, then one of the circuit judges, presiding. Mr. Hosmer appeared for the plaintiff; he was ably assisted on the trial by Hon. E. Darwin Smith, then a young and promising lawyer of the Monroe bar, residing at Rochester, now and for many years a justice of the Supreme Court for the seventh judicial district. Judge Price was defended by Hon. John C. Spencer, of Canandaigua, Charles M. Lee, of Rochester, and John Dixon, of Bloomfield. The high position of the parties, the hostility and bitter animosities which this quarrel engendered, the malignity of the words complained of, the ingenuity and ability of the defense, imparted a deep interest to the cause. Mr. Hosmer’s address to the jury was not surpassed, even by the grand and majestic ora-



tory of the strong and gifted Spencer, who threw the whole power of his great mind into the contest. In this trial there was a collision of mind with mind, seldom witnessed at the bar. But Hosmer's position and logic could not be overthrown.

After a clear, learned and impartial charge from Judge Gardner, the jury retired, and returned into court with the verdict of one thousand dollars for the plaintiff.

This was one of the heaviest verdicts ever given in an action of slander, in the county of Monroe. Mr. Pratt subsequently removed to Rochester, was appointed District-Attorney of Monroe county, after the expiration of his official term, removed to Michigan, was appointed judge of the Supreme Court of that State, and died while in the discharge of the duties of that office. Judge Price died some years after the trial. And thus the grave has closed over the parties litigant in that suit; all the contesting lawyers, except Judge Smith, and most of the jurymen. How short and earnest are the strifes, the sorrows and the joys of life! Well and truthfully has the beautiful and sublime poetry of the Bible compared the whole career of man to "the path of an arrow," which is immediately closed behind it.

The presiding judge still survives. Having attained the highest professional, judicial and political honors of the State, he retired to private life, distinguished for his many virtues, a stainless Christian character, eminent learning and abilities, reposing in peace, after duties well done, energies, thought and will tranquilized by submission to the Giver of all Good.

George Hosmer was one of the counsel engaged with Hon. Ebenezer Griffin, in the defense of the Morgan abducters, tried before Hon. Enos T. Throop, at Canandaigua, in the year 1826. He was a Mason, and during all the terrible crusade against the mem-

bers of that order, he was their intrepid defender and eloquent champion.

Soon after the trial of the Morgan abducters, he was retained to defend E. J. Roberts, then the editor of the *Craftsman*, a Masonic journal, who was indicted for having published a libel. The interest felt in this case extended throughout the State. All the bitter antagonisms of the day entered into it. Such was the nature of the alleged libel, that in striking down Roberts, its author, Masonry itself would be in a measure prostrated, and, of course, this state of things engendered a fierce contest.

The great legal abilities of Mr. Spencer were again put in requisition, subservient to Anti-Masonry. After a long and closely contested trial, Roberts was acquitted. This result added new laurels to Mr. Hosmer's reputation as a lawyer, while it gratified his dislike to the Anti-Masonic party.

He was once called upon to defend a very poor man against an oppressive suit brought by an overbearing and wealthy citizen, not particularly distinguished for ability or attainments, and who believed that money was more powerful than either. The counsel had reason to believe that some of the jury had heard the ring of the plaintiff's dollars, in a way that would tell on their verdict, and he administered a most withering rebuke against the use of money as controlling juries.

"Gentlemen," said he, "I once believed that the jury box was a sacred place. I know it was so once; but I fear that it is now sometimes desecrated by the hand of bribery. In this case, though, my client has right and justice on his side, and, as it would seem by the evidence, there should be nothing to deprive him of his rights—that he must succeed in his defense; yet my classic reading has taught me that it was an ass, a miserable jackass, whose panniers were laden with gold, that found its way through the gates of Athens, when an armed and powerful foe could not

effect an entrance ; and if your verdict is against my client to-day, it will be because the money of a jack-ass has found its way to some of your pockets. I allude to only a part of the panel before me. Gentlemen, let them be weighed in the balance ; let corruption to-day put on incorruption, and the right will triumph.”

The poor man succeeded, and the right did triumph. Are not the voice and sarcasm of an Hosmer demanded to administer a wholesome rebuke to juries of this day ? Who shall say that they are not ?

The political arena never afforded any attractions for Mr. Hosmer. He was ambitious, but his ambition was confined entirely to his profession. But in the fall of 1823, he was persuaded to accept the nomination for member of Assembly from Livingston county, which, at that time, elected two members. He was elected, took his seat in the Legislature of 1824, and was honored with the position of chairman of the Judiciary Committee. His colleague was Hon. George Smith. This was in many respects one of the most memorable sessions of the Legislature which ever took place in this State.

At this session Silas Wright first appeared before the people as Senator from the then fourth senatorial district, which consisted of nine counties, including the county of St. Lawrence, his own county. Although he had been a resident of that county but five years, yet, in the fall of 1823, he was put in nomination for Senator, and triumphantly elected over his opponent, General Moers, of Jefferson county.

Among the important measures proposed in this Legislature, was a bill providing for the choice of presidential electors by the people, who at this time were elected by the Legislature, which, in each presidential canvass, met early in November, for the purpose of choosing electors for President and Vice-President. The bill was introduced as a political move-

ment, to defeat Mr. C. Crawford, who, with Jackson, Clay, Adams and Calhoun, was a candidate for the presidency. Mr. Crawford, through Mr. Van Buren, was confident of securing the New York electors if they should, as usual, be chosen by the Legislature; and hence the introduction of the bill allowing the choice of electors by the people. The measure became at once very popular; therefore the friends of Mr. Crawford did not venture an open opposition to it. Mr. Flagg, a warm supporter of Crawford, introduced a resolution into the House, favoring the proposed new electoral law; but he annexed conditions to it, which, in certain emergencies, would give the choice of electors to the Legislature. The introduction of Mr. Flagg's resolution let loose the fury of legislative warfare, and a contest ensued which had never been equaled in either branch of the Legislature. In the discussion which followed, Mr. Hosmer took an important part. He was a ready, sagacious and eloquent debater, and his clear reasoning powers gave him a high and influential position. He supported Mr. Flagg's resolution, and in March, 1824, delivered his great speech in the House in its favor. It is seldom that a speech on a proposed bill or resolution in a legislative body produced the effect which this speech of Mr. Hosmer's did. It was a profound and statesman-like, a calm and philosophic review of the whole great question. Soon after its delivery the vote on the resolution of Mr. Flagg was taken, and the measure sustained by a vote of 76 to 47.

In the Senate, the Electoral bill passed through several amendments. Mr. Wright favored the choice of electors by the people, and introduced a bill into the Senate to that effect; but his bill was defeated. At length Hon. Edward P. Livingston introduced a resolution postponing the further consideration of the whole matter until the first Monday of the ensuing November, being the day beyond the extra session, when the electors would be chosen by the Legislature.



This resolution passed the Senate, and gave the State of New York to Mr. Crawford. Mr. Wright and sixteen other Senators voted for this resolution, thereby subjecting themselves to severe and bitter censure. They were immediately characterized as the famous "seventeen Senators."

At the close of his legislative term, Mr. Hosmer returned again to the practice of his profession. Declining another nomination, he left the political field forever, so far as entertaining any desire for official position.

He died in the 80th year of his age, March, 1861, at Chicago, while visiting his daughter, Mrs. Wells, of that city.

His highly cultivated literary taste and acquirements rendered him the life of a refined and an intellectual social circle. He possessed a mental energy which awakened and kindled a like energy in those with whom he conversed. The same love of sarcasm and satire which rendered him a formidable antagonist at the bar, tempered by the calm and pleasant amenities of society, rendered his conversation attractive, while he possessed the rare qualification of being an excellent listener to the conversation of others, which is often the talisman of fascination.

In his domestic relations, as husband and father, he was happy. Several children survive him, among whom is the distinguished poet and author, W. H. C. Hosmer, known as the Bard of Avon.

## WILLIAM M. HAWLEY.

Early Identified with western New York.—Elected a Constable.—Attends Court and Studies Law.—Sent in Pursuit of a Notorious Criminal.—Singular Manner in which the Man is Captured.—Description of the Allegany County Bar.—Hawley's Practice in Justices' Courts.—His Manner of Trying Causes in Those Courts.—Ludicrous Description of one of These Trials.—T. J. Reynolds.—Horse Shedding a Witness.—The Witness in a Close Place.—Mr. Hawley is Admitted to the Bar.—Forms a Partnership with the famous John Baldwin.—Appointed First Judge of Steuben County.—Elected to the State Senate.—His Career as a Senator.—A Delegate to the National Democratic Convention of 1848.—Description of the Convention.—Delegate to the Buffalo Convention in August, 1848.—His Influence in that Convention.—His Speech.—Co-operates with John Van Buren.—Hawley Joins the Republican Party.—Interview with John Van Buren.—Active in the Republican Party—Retires from Politics.—Character as a Lawyer and a Citizen.—Death.

WITH the eminent lawyer whose name stands at the head of this sketch, is associated much of the history of Steuben county and western New York; while the record of self-made men presents few higher triumphs of unassisted energy and exertion, than is exhibited in his life; for, he was in every sense, the architect of his own fortune. It has been truthfully said, that those who, in the commencement of life, are compelled to struggle with difficulties, determined to overcome them, have the key to success in their hands.

The beautiful fable of Antæus, the earthly giant, wrestling with Hercules, the giant of celestial descent, illustrates the potency of self-reliance and fearless determination, in grappling with formidable obstacles. When Antæus was in danger of being overcome, he touched the earth, instantly regaining his powers, and finally conquering. Thus with the subject of this sketch; he entered the battle of life, com-

pelled to contend with Herculean difficulties, and when, like Antæus, he was sometimes obliged to touch the earth, he sprang again to the contest with renewed energies, which at length gave him the victory.

William M. Hawley was born in the county of Delaware, New York, February 13th, 1802. His father was one of the early settlers of that county, a farmer by occupation. His means were limited, and he could afford his children but few advantages for education. Young Hawley very early evinced a desire for knowledge; and the few advantages within his reach were eagerly seized by him, and turned to the best account. In the humble common school to which he was early sent, he made rapid proficiency in reading, writing, and arithmetic, giving some attention to English grammar.

While very young, a friend of his father lent him Plutarch's Lives, which he read, not only with avidity, but understandingly. Through his whole life that great biographer continued to be his favorite author among the ancient writers. A clergyman in Mr. Hawley's neighborhood, who possessed a very good miscellaneous library for the times, observing the boy's love of reading, kindly offered him the use of his books. The offer was joyfully accepted, and from that time he became an industrious student; every leisure hour being devoted to his books. So retentive was his memory, that once reading a work, he could repeat verbatim, large portions of its contents.

While it is true, that the improvement of which the mind is susceptible by culture, is more remarkable in the case of memory, than in any of our faculties, yet in a boy of tender age, with few advantages for the culture of this, or any other faculty, a memory like his was truly remarkable; and it is not strange that young Hawley soon gained the reputation of being a boy possessing much intelligence and infor-

mation. Perseveringly continuing his studies, he at length acquired considerable knowledge of mathematics, grammar, rhetoric, and the English classics. He early conceived the thought that he should one day become a lawyer, and this idea was the theme of his ambition, the controlling motive of his life. He continued with his father until he was twenty-one years of age, when, with no fortune, except strong hands, a vigorous constitution, the mental acquirements which he possessed, and a determined purpose, he removed to Almond, in the county of Allegany. This event occurred in September, 1828.

As was the custom among the early settlers of western New York, he contracted for a piece of uncultivated land on credit, and immediately commenced the work of clearing it for tillage. His intelligence and business capacity were soon manifested, and he at once took a respectable position among the people of Almond. In the spring of 1824, he was elected one of the constables of that town. The duties of this office were of considerable importance, and required the exercise of some legal knowledge.

Providing himself with the proper books, he soon qualified himself for all the duties of his office. In this manner, he became a kind of legal oracle in the town. At this time, imprisonment for debt had not been abolished, and this relic of barbarism greatly enhanced the duties and responsibilities of constables. Many were the exciting pursuits for criminals and debtors, in which Mr. Hawley engaged.

On one occasion he was directed to arrest a man who had stolen a valuable watch. Several abortive attempts to capture him had been made by other officers, and the services of Hawley were sought.

One afternoon, with a single assistant, he cautiously approached the residence of the man, and from a clump of bushes, discovered him as he was entering his house. Hastening to the dwelling, the pursuers entered, but the culprit could nowhere be found,



although every nook and corner was searched. At length from some cause, the officers mistrusted that their intended prize had betaken himself to the chimney, which was large, and constructed on the primitive plan. The weather being warm, there was no fire on the hearth. How to get hold of the man, now became the great question. To reach him was impossible, and of course, no persuasion would induce him to come down.

Suddenly a thought occurred to Mr. Hawley. He must have a cup of tea, and he politely requested the man's wife to prepare it for him. But she positively declined to do so. "Then, Madam, I shall be obliged to do so myself, for some tea I must and will have," said he, and stationing his assistant outside of the house to prevent an escape, Mr. Hawley commenced making a fire. The woman attempted to prevent him, but taking a formidable pair of hand-cuffs from his pocket, he threatened to place her in limbo, which at once had a quieting effect upon her, and he proceeded to build the fire without further interruption. In a few moments, the smoke began to curl up the chimney, while the fire crackled on the hearth. Soon a sepulchral voice was heard from the region above, exclaiming :

"Hawley, for God's sake what are you doing down there?"

"Getting tea, and I want you to come down and take some with me," was the reply.

"I don't want any of your tea ; it ain't the kind I use, and I shan't come down," said the man.

"I rather think you will take a little of it, this time, and so I'll have the kettle boiling in a few moments," said the officer, throwing some light wood on the fire, which caused the flames to dart up the chimney.

In a moment a scrambling noise was heard, sounding as though the thief was endeavoring to gain the top of the chimney, but in the next instant he

dropped from his hiding place, and rolled at the feet of Mr. Hawley, nearly smothered with smoke and heat. After remaining on the floor a short time, he sprang to his feet, shook his fist fiercely at his pursuer, exclaiming :

“Damn your tea, and you too, Hawley ! This is what I despise ; but you won’t get any tea here, you rascal !”

“I’ll get you, and that will do much better, so come along.”

“Won’t you let me wash myself first ?”

“No I had rather have you just as you are, you have got your uniform on, so come along,” said Hawley. The man obeyed, and was taken where he was dealt with according to law.

In the discharge of his official duties, he was often one of the attending constables at the various courts held in Angelica. Although Allegany county was remote from the more cultivated portion of the State, yet its courts were graced by the most learned and able judges of that day. Ambrose Spencer, then chief justice, Joseph C. Yates, afterwards Governor Yates, William W. Van Ness, John Woodworth, William B. Rochester, and Robert Monell, each at different times dispensed justice from its bench. while Dudley Marvin, John C. Spencer, Daniel Cruger, Vincent Mathews, Henry Wells, Ebenezer Griffin, and other equally distinguished lawyers appeared at its bar. The legal contests of these gifted advocates were watched by Mr. Hawley with intense interest. Nothing occurred which escaped his notice ; and when the law was pronounced by those profound judges, he heard and garnered up all that fell from their lips. Thus, the court room to him, was a great law school, where legal points, precedents, and elementary principles were discussed and practically settled.

During the first term of court which he attended at Angelica, he entered his name as a law student in

the office of the late George Miles, then a leading member of the Allegany bar. As his means did not permit of his devoting his entire time to the office, he took with him to his home, such books as were necessary for him to study, and when relieved from his other duties, he devoted himself to his studies. Thus he continued for two years, perfecting himself in that legal knowledge, which in after years so distinguished him in his profession. Declining the office of constable, he commenced practice in justice court—in the mean time continuing his legal studies. Indeed, while discharging his duties as a constable, he was very often solicited to act in the capacity of counsel, on the trial of cases. Such were now his acknowledged legal attainments and abilities, that he at once gained a profitable and successful business. A distinguished lawyer, who in those days, often met him in justice courts, remarked that “Hawley tried a case before a justice with ability sufficient to distinguish him in any court.” He was not merely the sharp, ignorant, swaggering pettifogger—cousin germain to the shyster of larger cities.

His causes were conducted with dignity, propriety, skill, and learning. It must not be forgotten that in justices' courts, grave and difficult questions often occur, the solution of which demands the ablest juridical ability. In the discussion of such questions with older and more experienced lawyers, Mr. Hawley distinguished himself.

In these early legal contests, the most ludicrous scenes sometimes occurred, which Judge Hawley in after life, frequently related with great piquancy; one of which he related to the author a short time previous to his death. It was a case in which the late Thomas J. Reynolds appeared for the defendant. Mr. Hawley had clearly established his cause of action and rested the case. Mr. Reynolds called a certain witness for the defendant, after he was dismissed, recalling him. At each time the witness made the defense

a trifle stronger, but did not quite reach the point which the counsel calling him desired. At length, Mr. Reynolds excused himself for a moment, and called the witness aside, for the purpose of horse-shedding him. He did not, however, get beyond the quick hearing of Hawley, who listened to the following conversation :

“Bill,” said Reynolds, “what ails you ; can’t you understand the point ?”

“Yes, but I—I.”

“Never mind, Bill, you must go on to the stand again, and get to the point,” said the counsel.

“Get to the point ; I should like to know what you call getting to the point ? Why good God, Tom, I’ve sworn tremendously, already, and Hawley, damn him, I believes he knows it,” said the witness.

“Never mind Hawley, he can’t hurt you ; so go back and swear again, spit out what you know, and don’t be afraid of Bill Hawley. I tell you again, he can’t hurt you.”

“I don’t know about that,” said Bill, with a shrug. “He’s got a confounded unpleasant way of squeezing a fellow, who he thinks is guessing at things.”

He took the stand again, however, but, before proceeding to testify, Mr. Hawley said, with some severity :

“See here, sir ; I wish to ask you one question. Have you not already sworn tremendously on this trial ?”

The witness started with a frightened look.

“There, Tom,” said he, “what did I tell you ?” and immediately left the stand.

He did not appear there again that day. At this time, Mr. Reynolds was not admitted to practice. Some years later, however, he was called to the bar and became one of the most respectable lawyers of the Steuben bar, a generous, high-toned, and useful citizen. A sketch of his life appears in another part of this work.



At length Mr. Hawley confined his studies entirely to the office; in due time he completed them, and, after passing, in a very creditable manner, a thorough examination, he was duly admitted to the bar, and immediately opened an office in Almond. Such had been his reputation before his admission, that he was soon in the midst of a practice of considerable importance.

In the fall of 1837 he was induced to make Hornellsville his future residence, where he soon took a high position among the able and distinguished lawyers by whom he was surrounded, and controlled a large and lucrative practice.

One of his earliest business relations was a partnership with the late John Baldwin, whose legal abilities and keen wit distinguished him throughout western New York, and whom Mr. Hawley always held in high esteem, not only for his learning and talents, but for his incorruptible integrity and generosity. So keen was this singular man's sense of honor, that he could not be induced to embark in the conduct of a cause in which he believed there was real dishonesty. Of course, like all lawyers, he was frequently induced to defend or prosecute an action by imposition.

One day, while in company with Mr. Hawley, and while both partners were engaged in their office, a man who had been charged with stealing flour came in for the purpose of retaining one of them to defend him. He stated his case, and urged his innocence with much earnestness. After listening patiently to him, Mr. Baldwin said, quite sharply:

"Do you really pretend, sir, that you are not guilty of this crime?"

"I do, so help me God," said the man.

Mr. Baldwin was at this time quite lame.

"Hawley," said he, abruptly turning to him, "kick that damned rascal out of the office! he lies in his speech and in his looks. See there," he con-

tinued, pointing to marks of flour still adhering to the sleeves of the man's coat, "he's got the marks of petit larceny stamped on his clothes!"

The man gave one glance at the marks of his guilt, and, without saying another word, left the office. He went, however, to another law firm, was defended by them, but he was convicted.

The partnership of Hawley & Baldwin continued only about one year, when it was dissolved. The practice of Mr. Hawley continued to increase. With unceasing labor and industry, he devoted himself to his clients, and thus attained the front rank of his profession, and acquired considerable wealth.

In January, 1846, he was appointed by Governor Wright first judge of Steuben county. Many years previous to this, Mr. Wright had made his acquaintance, and, regarding him as a high minded, honorable and able lawyer, he tendered him this position as a mark of his esteem and confidence. The appointment gave great satisfaction to the people of Steuben county, for with them the judge was always a favorite, and he possessed many qualifications for a successful judicial officer.

Mild, amiable and courteous, yet firm, decided, dignified and impartial, it is not saying too much of him, that he lost nothing, when compared with his learned and able predecessors. Receiving, however, the position when the second State Constitution was about to be succeeded by the new one of 1846, he held it but a little over a year, and Hon. David McMaster took his place by election, Mr. Hawley being a candidate for Senator in the twenty-fifth Senatorial district of the State.

He was elected in the fall of 1847. John Young was then governor, Hamilton Fish lieutenant-governor and president of the Senate. Though that accomplished and able statesman did not agree with Mr. Hawley in politics, yet, on the entrance of the latter into the Senate, a warm and lasting friendship

commenced between those gentlemen, and Mr. Hawley was honored with the second position on the Committee of Ways and Means, while his name appeared on other important Senate committees during his term.

He was never what might be called a successful politician. Those qualities which in him were most to be admired, unfitted him for the schemes and practices of mere politicians. He was too honest and direct to enter into all their plots and counter-plots; and though, in some cases, the end proposed might be approved by him, yet his soul abhorred the means by which those ends were sought to be obtained.

On the 19th of February, 1848, he delivered a speech in the Senate on certain resolutions instructing the Senators and Representatives in Congress from this State to vote for the prohibition of slavery in New Mexico, whose entrance into the Union was then anticipated. This speech added much to his reputation. It was calm, direct and statesman-like—it was regarded as one of the ablest delivered in the Senate during that winter.

At this time, the question of slavery in the Territories began to be one of great and absorbing interest. The relations of parties began to change. The great questions which, since the organization of the government, had divided the country, were now nearly all settled, and hence the cohesive power which held parties together, was losing its strength in the new issues that were being formed.

A spirit began to sweep over the land, bearing things onward, with a terrible velocity, towards the crisis through which the nation has passed, and men learned that in party, as in material organizations, a destructive and recuperative energy is ever active, and decay or growth is determined by the relative intensity of these antagonistic forces.

Judge Hawley was a delegate from this State to the Democratic National Convention, which assembled

at Baltimore on the 22nd of May, 1848, "at which two delegations from the State of New York presented themselves for admission; one of which was known as the Free Soil Radical or Barnburner delegation, under the guide of the late Samuel Young, and that of the Conservatives or Hunkers, who were under the lead of Daniel S. Dickinson." Mr. Hawley identified himself with the former.

In the language of Mr. Greeley: "The convention attempted to split the difference by admitting both, and giving each half the vote to which the State was entitled; this the Barnburners rejected, leaving the convention, and refusing to be bound by its conclusions. The great body of them united in the Free Soil movement, which culminated in a National Convention, held at Buffalo, August 9, 1848, in which Martin Van Buren was nominated for President, and Charles Francis Adams for Vice-President."

Judge Hawley was also a delegate to the Buffalo Convention, and entered ardently into all its proceedings. He was one of the committee who introduced those resolutions, whose essential elements were afterwards adopted by the Republican party. On the introduction of those resolutions, he delivered a speech, the very sentiments of which, in after years, he reiterated in a Republican State Convention.

"This convention," said he, "is to give the nation a new testament, a new order of things. It is the ax laid at the root of slavery, as a progressive institution. There are to be great and powerful objects thrown in our way, it is true, but patriots must struggle against great obstacles. Timid, small men shrink before them. Dead fish, Mr. Chairman, can swim down stream, but it requires a live and active fish to go up the current."

John Van Buren followed the judge, in a speech in support of these resolutions. A warm friendship had, for many years, existed between him and



Hawley. It was renewed at this convention, with the political faith which they had adopted. A few years after this, the former renounced this faith, but the latter continued in it through life; at first a Free Soil Democrat, then a Republican. After Mr. Hawley united with the Republicans, Mr. Van Buren accepted an invitation to address a Democratic mass meeting at Hornellsville. Soon after his arrival in that village, Judge Hawley called upon him. The usual formalities of their meeting being over, Mr. Van Buren said :

“Judge, I am sorry to learn that you have deserted the faith of your fathers, and wandered after strange gods. How is this?”

“I have adhered only to the faith which you so eloquently exhorted us to maintain, at the time of your conversion and mine, at Buffalo, a few years ago. Do you not remember, that you told us that you felt as though your load of sins were gone? How is that, Mr. Van Buren?” said the judge.

“Well, Judge, I thought I felt just so then, and it was worth something to have that feeling; besides, you know, as they said at the time, Dad was then under the hay,” said Mr. Van Buren, laughing.

After retiring from the Senate, Judge Hawley never again sought for official position, but confined himself exclusively to his profession; and, although fortunate in his financial matters, he continued to practice until within a short period of his death. At the September Steuben circuit for 1868, held at Corning, he appeared and conducted a very important action for divorce, brought by a lady against her husband. There appeared no diminution in his fine mental powers, and he stood at the bar, as he had for years, an able and powerful competitor, though his health had been for some time declining. He always loved the detail of practice, and delighted in the contests of the forum. Like a perfectly disciplined soldier, whose delight is in the precision of military drill, he

viewed all proceedings at the bar, all minutiae of practice with deep interest, and his large experience enabled him to easily detect incongruities and errors which occurred in pleading, practice, and on trial. Few lawyers were more perfect in their preparation of a case for trial or argument than he. His papers always exhibited, what a correct system of pleading demands, a brief philosophic statement of legally deduced facts, from the circumstances attendant upon the matter complained of, a proper denial of which contains the statements of the opposite party's defense, governed by the same rules, and which forms the issue to be tried by a jury. Like many of the older lawyers, he disliked the Code, preferring the mathematical precision of the old practice, which, though incumbered by some useless words, was adopted by such minds as Barron, Coke and Mansfield, and admired by all the great lawyers of England and America. But this did not deter him from acquiring a perfect understanding of the new practice.

A lawyer of extensive practice, and fine legal abilities, relates, that some years ago, Judge Hawley commenced an action which involved a very difficult and doubtful question of law. The papers required the most minute circumspection and research. They were brought to this lawyer for the purpose of interposing a defense. At first, he did not believe that papers could be prepared, sufficient in form, detail, and substance to sustain such an action, and he anticipated an easy victory. But on examination, he was surprised to find in the papers, a firm and substantial foundation for the cause of action; every objection being anticipated, and every point fully fortified. They were, in fact, the result of laborious study, the offspring of an accomplished legal mind. The action was settled; but the papers remain in the lawyer's office, and have since been used as valuable precedents.

Judge Hawley's character did not escape censure.

There were points in it which naturally drew upon him enmity, and even hatred.

As an enemy, he was bitter and uncompromising, and not without a love of revenge.

As a friend, he was sincere and undeviating. Unpretending and easy in his manners, with pleasant, even fine, conversational powers, he was an attractive companion. There was a sunny humor in his manner, that drew the young as well as the old to him, and which disguised his faults. In person, he was slightly above the medium height, well proportioned and erect. As a speaker, he was calm, temperate, and logical. He knew how to enliven a dry theme, with a proper play of the imagination, and thus give relief to the fatigue of close attention. In the argument of a purely legal question, at special or general term, he avoided all florid language, and sought perspicuity and conciseness of expression.

In his domestic relations, he was a kind husband, an indulgent and liberal father. As a citizen, he was public spirited, sedulous to advance the interests of the community in which he lived, and reasonably active in all projects of public improvement. The spontaneous tribute of the members of the bar, and the public generally to him, sufficiently attests the high estimation in which he was held, and the general sorrow which followed him to the tomb was not only honorable to him but to the community. He died on the 9th of February, 1869, in the sixty-eighth year of his age. Some years previous to his death, Mr. Hawley united with the Episcopal Church at Hornellsville; and he continued in the unobtrusive and meek observance of religious duties until his death. Without parade or ostentation, he approached the Mercy Seat, asking in spirit and sincerity, that God would be merciful to him a sinner. To live religiously, he did not think himself called upon to give up the proper pursuits and gratifications of human nature. His views of the true excellence of a human being were large

and generous, and hence, instead of that contracted and repulsive character, which has often been identified with piety, he entertained the loftiest conception of the infinite Father, whom he approached with lowly reverence, satisfied if he could but touch the hem of his garment, instead of worshiping with impious assurance and canting zeal. Such was William M. Hawley.



*[Faint, illegible handwritten text]*





Your Friend  
Alvan Stewart

## ALVAN STEWART.

Stewart and James Otis Compared.—His Love of Liberty.—His Genius and Intrepidity.—Belonged to a Class whose Footsteps are seen in History.—His Birth.—A Student at Burlington, Vermont.—His Character as a Student.—Writes a Drama called Ecclesiastical Imposition.—One of the Actors in it.—An Amusing Scene.—Graduates.—His Love of Literature.—A Professor in a Seminary in Canada.—War of 1812.—Resigns on Account of it.—Returns Home.—Fruitless Search for Employment.—Walks from his Father's Residence in Vermont to Albany, One Hundred and Eighty Miles.—No Employment in Albany.—Starts on Foot for Schoharie County.—Reaches Middleburgh.—Meets a Regiment of Soldiers on their Way to the Frontier.—Stewart Arrested as a Spy.—His Danger.—His Defense.—His Amusing Speech.—His Discharge.—Reaches Cherry Valley.—His Success.—A Law Student.—Goes to Plattsburgh.—Reuben H. Walworth, —His Character.—A Student in his Office.—Visits the Southern States.—Principal in Southern Academy.—Interview with Mr. Clay.—Returns to Cherry Valley.—Admitted to the Bar.—Character as a Lawyer.—Amusing Incident at the Court House at Cooperstown.—Visits Europe.—Returns, and Opens an Office at Utica.—His Success.—Political Abolitionism.—Stewart's Connection with it.—His Eloquence and Fame.—Luther R. Marsh, Remarks on Stewart.—In Danger of Being Mobbed.—Instance of his Personal Strength.—His House in Danger.—Prepares for his Defense.—His Sarcastic Speech on the Slander Trial.—J. G. Whittier.—Stewart's Great Speech Before the Supreme Court of New Jersey.—The Scene in Court.—Character as a Speaker.—Extract from his New Jersey Speech.—Eulogy on Elisha Williams.

IN many respects, Alvan Stewart was the counterpart of James Otis. Both of these persons were distinguished for talents, learning, classical education, and a high order of eloquence; both were actuated by a stern, inflexible love of liberty and hatred of oppression; both possessed bold, original, thinking minds, which reached beyond the present, causing them to live in advance of their times. They were the Hampdens and Sidneys of their age, who would have calmly died, rather than yield one iota of those principles which they held sacred—the pioneers in great struggles for liberty—lawyers of commanding powers,

each distinguished at the bar for fearlessly advocating grand, but at the time, unpopular principles of liberty. Mr. Otis, in 1778, before the Supreme Colonial Court of Massachusetts, in his great plea in opposition to the edict of assistance, instituted by the British government—a speech which Mr. Adams pronounced “a flame of fire, at the delivery of which, American independence was born.” Mr. Stewart, in 1845, before the highest tribunal of a sovereign State, boldly contending against a system established by the usage of years, and sustained by the chivalry of a nation; in a plea replete with great, lofty, original ideas of human liberty, sparkling with condensed brilliancy, applying the constitution and the laws to the rights of man, expressive with meaning and animation—“coming warm from his soul and faithful to its fires.” May it not be said that the spirit of the emancipation proclamation then leaped from the lips of Alvan Stewart?

He was accused of extravagance and ultraism—of being a disorganizer, a disseminator of incendiary principles—an enthusiast, dealing in dangerous, but useless speculations—a fanatic—charged with beholding objects in a sort of prismatic view—and dealing with distorted relations of things; all these matters were, doubtless, sincerely believed of him.

It is a strange feature in our nature, that those who first uphold great and startling truths—truths destined for the amelioration of mankind, destined to live on from age to age, in increased beauty and splendor, are always assailed for their extravagance, their idiosyncrasies—follies, or fanaticism; confirming the saying of the great Scotch philosopher, that the attempt to do good to society, is the hardest of all tasks.

Mr. Stewart did not belong to that class of men who never enter into extravagances, because they are so buttressed up with the opinions of others, on all sides, that they cannot, or dare not, move much either one way or the other; who are so slightly moved with any kind of reasoning that they remain



at equal distance from truth and error, making slight progress in either direction. These are persons whom the world calls men of good judgment, and so they are; they can always be elected to office, they can glide into the Legislature of their State, leap into Congress from some hobby; can rail vociferously at error with the multitude, but stand passive before any evil, no matter how stupendous, rather than heroically rebuke it single-handed and alone.

Alvan Stewart belonged to that class who fearlessly strike at mighty wrongs, regardless alike of censure or praise; whose blows indelibly mark the page of history; whose fame, perhaps, unsung in life, is caught by the historic muse and given to immortality.

Alvan Stewart was born at South Granville, Washington county, New York, September 1st, 1790.

His father, Uriel Stewart, was a farmer in moderate circumstances. In the year 1795 he removed to Westfield, Chittenden county, Vermont. There, Alvan attended the common district school. Being naturally studious, at the early age of seventeen he was qualified for a teacher; and in the autumn of 1808, he commenced the duties, pleasures and labors of teaching, devoting his leisure hours to the study of medicine and anatomy. In the spring of 1809 he closed his school, determined to acquire a liberal education. Receiving but little aid from his father, he was compelled to divide his time between teaching and preparation for college. Having passed a satisfactory examination, he was admitted to the University at Burlington, Vermont.

His was a mind susceptible to impressions, and he easily received instruction; therefore, with the diligence and studious industry which he possessed, he soon became one of the most thorough and methodical students in college. In the languages, in rhetoric and eloquence, he was highly distinguished. This, it is true, is but a common characteristic, and can be

said of most ambitious and promising students ; but, as has been said of him, "the morals of the young collegian passed the ordeal of college life without yielding to the temptations and to the vices which are, perhaps, inseparable from any place, and he left the institution with unsullied purity of sentiment and manners."

The character thus early formed, Mr. Stewart retained through life.

He graduated with honor, and delivered the Greek oration at commencement.

While in college, one of the literary societies to which he belonged, was permitted to give a public dramatic entertainment, provided the piece to be represented was the original production of one of the members of the society, and founded on some highly moral circumstance or event, and "its language such as will comport with the high morality of this university, with due respect to religion." All the students were greatly elated with the thoughts of witnessing a drama as part of the closing exercises of the year, but the condition that it must be entirely original, for a time was supposed to amount to an interdict of the promised pleasure. In this emergency, Alvan Stewart was applied to for relief; he was requested to write the drama or comedy, from the fact that as an actor in the dialogues which were often spoken in the college, he exhibited histrionic powers of no common order; it was therefore supposed, and justly too, that he, of all the students, could most excel in dramatic composition. Without hesitation he commenced, and finished a comedy entitled "Ecclesiastical Imposition." It was subjected to the inspection and criticism of the faculty; some sarcastic sentences against the clergy in general, some sly thrusts at one of the clerical professors in the institution who was particularly disagreeable to the students, were erased, and the piece was pronounced entirely proper to be performed.

Stewart himself took one of the principal characters, in which the ludicrous was so inimitably blended with the serious and the grave, that it was almost a transparency of his own character; "he made such sudden transitions from the play-house to the church, from pathos to comedy; his witty speeches were so much like a merry jig from the organ loft" following a funeral voluntary, that he kept the audience in a roar of laughter, or dissolved in tears, during his appearance before it, and his play, so far as that occasion was concerned, was a great success.

Through many hardships, struggles, and privations, he at length succeeded in one of the great undertakings of his life, and received his bachelor's degree.

Seneca has said, "That a virtuous person struggling with misfortunes and rising above them, is an object on which the gods look down with delight." It is certainly an object on which all good men look with pleasure. It would, therefore, have been difficult to perceive which were happier, the faculty of Burlington University in conferring the degree upon Alvan Stewart, or Alvan Stewart in receiving it.

At the age of nineteen, he was enabled to leave college, bearing with him the respect and good will of the faculty and students; though penniless, the world was before him, and, conscious of having made his first advance in the battle of life, his self-reliance and ambition prompted him to await its further onsets, confident of victory.

While in college, he made the acquaintance of a young Canadian gentleman, through whose influence he procured a professorship in a school of royal foundation, near Montreal. Here he studied, with considerable success, the French language.

He continued in this institution until June, 1812, when the troubles between England and the United States culminated in war. Owing to his outspoken patriotism, Mr. Stewart incurred the displeasure of

one of the officers of the institution, which resulted in an open altercation, and he tendered his resignation; but so valuable were his services as a teacher, that the difficulties were adjusted, and he was induced to remain another year. At the close of the summer term, he returned home, where he passed his vacation. In the following August, on his way to resume his duties, soon after crossing the Canada line, he was arrested and taken to Montreal as a prisoner of war. Through the influence of friends, he was at length released; but such was the condition of the country, that it was unpleasant for him to remain there, and, resigning his professorship, he again returned home.

He was now out of employment, with but a small sum of money in his possession. He endeavored to obtain the position of principal in the Plattsburgh Academy, but, not succeeding, he left his father's house, and commenced a journey on foot, to Albany, with the hope of securing employment in that city as a teacher. The distance which he was obliged to travel was a hundred and eighty miles. With a stout heart, and inspired with hope, he reached that city in less than five days after leaving home. But there, disappointment again awaited him; he remained in the city a week, but, finding no employment, he once more set out on foot in search of a school.

He continued his journey for several days, meeting with no success. At length, with an empty purse, wearied, but not discouraged, he reached Middleburgh, in the county of Schoharie, New York. Here he met with a singular adventure. The excitement throughout the country, occasioned by the war with England, was now at its height. The war spirit had infused itself into all circles, and the policy of Madison and Tompkins, was highly popular.

There were those, however, who opposed the war; these persons were regarded with peculiar aversion and hatred by the war party, who often charged them with giving aid and comfort to the enemy.



On Mr. Stewart's arrival at Middleburgh, he found a large body of militia assembled there, preparing to move to Sackett's Harbor, which was then menaced by the British. The sudden appearance of a stranger at this peculiar juncture, on foot, and with no apparent business, created suspicion among the zealous patriots. Entirely ignorant of this, Stewart freely and readily answered all interrogatories propounded to him. In doing so, he evinced such perfect knowledge of the geographical situation of Canada, the disposition of the troops along the frontier; he talked so freely of the popular sentiment in the king's dominions, that his interrogators were convinced he had appeared among them in the character of a spy. When the interview ended, he was surprised at the singular conduct of the officers, a group of whom drew aside, and, from their excited manner, and the frequent glances which they directed towards him, he was convinced that he was the subject of their consultations. From the dark and threatening looks of the men, he was aware that he was an object of hatred or suspicion, and yet he could give no reason for this strange conduct.

He was at one of the hotels in the village, but as matters assumed such an unpleasant appearance, he proposed to seek another place of rest. Taking his bundle in his hand, he inquired for another hotel; it was pointed out to him. To reach it, subjected him to a walk of a hundred rods; hardly had he gained half the distance, when a file of soldiers, armed with muskets, overtook him, and he was ordered to halt.

"What does this mean?" he inquired.

"It means that you must consider yourself arrested, and return with us," replied the officer in command.

"Arrested? and for what?"

"We don't allow spies among us without picking them up and treating them according to the rules of war; so move along, sir," said the officer; and Stewart



was conducted into the presence of the commander of the troops.

A drum-head court-martial was organized, and the young stranger was hurried to trial, charged with being a spy.

Matters now had assumed a decidedly unpleasant and dangerous appearance. But Alvan Stewart exhibited the same composed presence of mind, the same firmness which, in after years, saved him from the fury of a howling mob.

When the presiding officer of the court announced his readiness to proceed, Stewart asked the privilege of being heard. It was objected, at first, that such a proceeding was contrary to the rules of courts-martial; but his manner, and that peculiar expression of a face which always enforced homage, and which once seen was never forgotten, plead eloquently for him, and his request was granted. In that solemn and impressive manner which at times rendered his eloquence so irresistible, he commenced by saying:

“I think myself happy, O president of this court-martial, because I shall answer for myself this day, before thee, touching all things whereof I am accused of these soldiers; especially because I know thee to be expert in all customs and questions which are among the rules of war; wherefore I beseech thee to hear me patiently.”

He then entered minutely upon his defense. His appearance, his accent, his gestures, were so sincere; he spoke so feelingly of the wrongs of a poor, guileless traveler, with no friends, that he gained the sympathy of the officers and soldiers. Occasionally, that love of the ludicrous, which in after life set courts and juries in a roar, took possession of him, and the stern tribunal before which he stood was convulsed with laughter.

“I pray you,” said he, “do not emulate Alexander the Great, as depicted by Fluellen, in Shakespeare, who, in his rages, and his furies, and his

wraths, and his cholers, and his moods, and his displeasures, and being a little intoxicated in his prains, did in his ales and his angers, look you, kill his pest friend, Clytus." The sly hit about being "intoxicated in the prains," while it produced roars of laughter from the soldiers, made the dignified president of the board, a scowling militia captain, wince, for certain reasons which Stewart understood. He closed his address in a patriotic appeal, which was full of deep, impressive eloquence, and which carried all hearts with it.

Resuming his seat, he quietly awaited results ; for a moment there was the deepest silence. At length the commander of the post arose and declared his conviction that the prisoner was not a spy, suggesting to the judge advocate that he ought to be discharged, and Stewart was set at liberty.

The scene was changed ; he was now surrounded by friends on all sides. In better days he frequently related this incident, and on one occasion he remarked that could he have that court-martial speech just as he delivered it, he would willingly give any sum of money.

He remained at Middleburgh a few days, and then, much to the regret of the soldiers, continued his journey, with no definite destination in view.

At length he reached a fork in the road ; a friendly guide-board informed him, that one of the roads led to Utica, the other to Cherry Valley. Standing at the point where the roads diverged, he held his cane up perpendicularly, and let it fall as it would, determined to follow the road into which it fell ; as it fell in the road to Cherry Valley, he regarded that as a favorable omen ; he followed the indication, and arrived there the next day,—the 13th of September, 1812.

He found the academy at this place without a principal, and immediately applied for the position. He was informed that there were several applicants

for the place; but the manner and conversation of Mr. Stewart pleased the trustees; a bargain was concluded, and he soon entered upon the discharge of his duties.

The next day he was entered as a student at law, in the office of James Brackett, Esq., a distinguished lawyer of Cherry Valley.

As Mr. Stewart had regularly pursued classical studies for four years, since he was fourteen years of age, that time was deducted from the seven which were then required of young men before their admission to the bar.

Fortunate in pleasing the officers and patrons of the academy, he prospered as a teacher, and advanced himself with great rapidity as a student at law. He continued at Cherry Valley until May, 1813, when he returned home, well clothed, considerably advanced in his professional studies, and one hundred and eighty dollars in his pocket,—the net profits of nine months' teaching. Early in June following, he entered the office of Palmer & Walworth, at Plattsburgh, N. Y.; the latter was subsequently elevated to the high office of chancellor of the State.

Few persons, in any age or country, ever obtained so high a station, and continued in it so long, with such unsullied excellence of character, as did Chancellor Walworth. As was said of Sir Samuel Romilly, "He was in truth, a person of the most natural and simple manners, and one in which the kindest charities and warmest feelings were blended, in the largest measure, with that firmness of purpose and unrelaxed sincerity of principle, in almost all other men found to be little compatible with the attributes of a gentle nature, and the feelings of a tender heart." The reports of cases adjudicated in the old Court of Chancery, are living and enduring monuments of his judicial ability and learning.

Mr. Stewart was so imbued with the spirit of adventure, that it was with great difficulty he could con-

fine himself to the wearisome, plodding life of a law student. After remaining at Plattsburgh a few months, he determined to visit the western country. Accordingly, he once more started out on the wide world; but by the time he reached Cherry Valley, his funds were exhausted, and he once more entered the academy at that place as its principal, and continued his legal studies in the office of the late Judge James O. Morse. But when, by his academical labors, his purse was once more replenished, he again, in company with Ira Bellows, entered on his prospecting tour through the then far west, now western New York, traveling on foot. He visited all the points of interest in that region; at length he reached Olean Point, where he remained a few days to regain his strength and vigor.

While there, he was retained to try a suit in a justice's court, which he did much to the satisfaction of his client and his own gratification. About this time, a raft was in readiness to leave Olean, on which he embarked for a trip down the river; the expenses of which were defrayed by rendering some slight service to the raftsmen on the way. At the junction of French creek and Allegany river, he took leave of the raft, and engaged passage on a flat-boat to Pittsburgh.

At length, in April, 1815, he reached Paris, Kentucky, with thirty dollars in the treasury. Here he obtained a desirable position as principal teacher in an academy, employing his leisure hours in the prosecution of his legal studies.

Yielding again to his love of adventure, in April, 1816, he closed his school, and with three hundred and seventy-five dollars in his pockets, he once more commenced his wanderings.

On the 20th of May, following, he visited Lexington, Kentucky, and, provided with letters of introduction from a friend at Paris to Henry Clay, he called on that illustrious statesman, who was then speaker

of the House of Representatives, having just returned from Washington to Ashland. He received the young traveler with that graceful benignity, which rendered his manners so extremely pleasing and even fascinating to all who approached him.

He entered freely into conversation with his guest, discovering in him, a fertile and vigorous mind; learning that he was preparing for the bar, he manifested much interest in him, giving him some salutary advice as to the manner of pursuing his studies, and as to the character and influence of the lawyer.

“You must,” said Mr. Clay, “cultivate, assiduously, the habit of reading, thinking, and observing; for there is no excellence without great labor.”

Before Stewart took his leave, Mr. Clay gave him letters of introduction to eminent gentlemen residing in the towns which he proposed to visit.

In speaking of this interview, Mr. Stewart once remarked, “The moment my eye fell upon Henry Clay, before he uttered a word, I was impressed with his air of natural greatness. As has been said of Halifax, his brow, his eye, his mouth, indicated a powerful intellect, and his placid dignity, half courtly, and half philosophic, belonged to Clay, and to Clay alone.”

After visiting various parts of the South, Stewart returned to Cherry Valley, and resumed his studies in the office of his friend, Judge Morse.

Having enjoyed all the novelties and all the perplexities, resulting from a life of travel, he determined to relinquish all other pursuits, and prepare for his admission to the bar, resolved to become the lawyer in the depth, extent, variety, and accuracy of legal learning; and he carried his resolution into effect; the laws of nature—the laws of nations—the civil law—the law merchant, and the maritime law, all received from him the closest attention. It was his ambition to be able, as Cicero recommends, *apte*,



*distincte, ornate dicere*; how well he succeeded, is revealed by his future professional career.

In due time he was admitted to the bar, and, as a partner of Judge Morse, commenced the practice of law at Cherry Valley. He soon acquired a high reputation for eloquence and talents, and gained a properous practice.

Though he loved the principles of law as a science, though common law, precedent and statutes, were familiar to him, yet he did not relish the technical, mechanical and formulary branches of his profession. But, as necessity compelled him to labor, he chained himself to the tasks which the life of a country practitioner at that period imposed upon him; and, notwithstanding the natural tendencies of his mind, he entered the field of special pleading, whose formulæ, to use the language of another, become as much a scientific instrumentality in the system of actions then existing, as is logarithms or algebra in the business of mathematics. "Their use, or their usefulness, or their necessity," continues the writer, "is as much a question of science as is either logarithms or algebra." And he became familiar with the Demurrer, the Plea, the Replication, the Rejoinder, the Surrejoinder, the Rebutter and Surrebutter, which series of pleading has been pronounced "the *rationale* of the process of judicial investigation."

Thus, for sixteen years, he devoted himself to his profession with such pecuniary success that he acquired considerable property, and gained the reputation of an eminent lawyer. But this entire dedication of himself to business began to affect his health, which at length became so seriously impaired that he was obliged to surrender the details of office business, and at length to give up, for a time, the entire practice of his profession.

At this period, he was advised by his physician to travel; and accordingly, in 1831, he visited Europe.

He returned home, with his health much im-

proved. Early in the year 1833, he disposed of all his interests at Cherry Valley, removed to Utica, and in that city resumed his profession, but he confined his business entirely to the courts, having nothing to do with the drudgery of office practice. In the capacity of counsel, his business extended over a large portion of central New York, and even into distant counties, meeting in antagonism the ablest lawyers in the State.

The labor, strife and collisions of his profession did not in any degree impair his love of letters, and the culture of his mind. He read, critically, all the eminent Latin historians in the original.

Frequently, in speaking of Livy, Sallust and Tacitus, he used the language of an elegant English scholar: "I am pleased with Sallust for entering into those internal principles of action which arise from the characters and manners of the persons he describes; with Tacitus for displaying those outward motives of safety and interest, which give birth to the whole series of transactions which he relates; and with Livy for his inimitable manner of telling a story."

With great industry, and much expense, he gathered a library, from which he drew the inspirations of an elegant literature. In his hours of relaxation from business he retired to it, and over those pages which in earlier years fired his admiration and formed his youthful taste, he forgot the toils, cares and weariness of life's great struggle; thus employed, he returned again to that period when ambition has no bounds and fancy no curb.

Ah, what power is there which calls us so forcibly from the stern scenes of our manhood, back to the beautiful ideal of our youth, like glancing over our earlier studies? Friends—classmates—those "whom youth and youth's affections, bound to us," start up before us, and, ere we are aware of it, boyhood has come again.

In the solitude, in the conflicts and struggles of

his youth, the strength of Mr. Stewart's mind was called out; they drew him into intimacy with the outward universe—with man—with his own soul; gave his nature a kind of poetical habit, and stimulated those elements of pathos which often started out in his speeches, and carried his auditory captive.

Mr. Stewart's attendance upon a circuit was always regarded as an event of interest, both to the bar and to laymen.

He was once engaged for the plaintiff in an important case at the Otsego Circuit. The counsel for the defendant, taking umbrage at some remark of Mr. Stewart in his opening, during the trial made several sarcastic attacks upon him. It happened that this lawyer, a few weeks previous, had been strongly accused of receiving the visits of a certain lady in his office, quite too frequently to warrant the conclusion that she came there on legal business, and the matter created much scandal. This affair had come to the ears of Stewart.

In his address to the jury, the lawyer continued his attacks. At length he remarked, raising his voice to a high pitch, that "when the counsel for the plaintiff died, it should be written on his tombstone, 'Died of attempting a dry joke,' for that, gentlemen, is probably the way he will shuffle off this mortal coil." Of course, considerable laughter followed this remark, and the counsel believed he had annihilated his opponent.

Mr. Stewart, in addressing the jury, made one of those efforts, which has given him his high reputation as an advocate; he made no allusion whatever to the counsel opposed, until he had nearly closed his remarks; when he suddenly paused, and with one of those looks which all knew was a prelude to a withering sarcasm, said:

"Gentlemen, I had nearly forgotten that I have an opponent here; really he has done so little in the way of defense, that having hardly felt him, I was in

danger of overlooking him. But you will say that it would be unkind for me to do so, since he has passed through all things earthly, down to the period of my death, and benevolently prepared my tombstone for me. In charity, therefore, I will do something for him; but what I do will only be suppositious. Suppose, gentlemen, that some day my friend here should be found dead in his office; such mournful events do sometimes happen. Now I will suppose what the verdict of the coroner's jury would be in that case. It would, gentlemen," said he, in a deep sepulchral voice—"it would be, 'assassinated in his office by Kitty Sly, who pretended to go there for counsel.'"

The scene that followed can better be imagined than described. There stood Stewart looking the very picture of solemnity, until the explosion ended, when he continued with a deeper shade of sorrow passing over his features,—“gentlemen, as my friend here, has been terribly exposed to such a fearful fate, I can only bid him—beware! beware!”

Again all in the court-room were convulsed with laughter, which the officers in vain attempted to suppress. Though that lawyer lived to try many more causes against Mr. Stewart, he never again attempted his sarcasm upon him.

Luther R. Marsh, Esq., who, during the latter part of Mr. Stewart's professional career, often heard him at the bar, and who knew him intimately, thus speaks of him:

“He was one of the most formidable adversaries that ever stood before a jury. You could do nothing with him, nor make any calculations for him. It was impossible to tell where his blows would fall, or where his point of attack would be, or what scheme of defense he would adopt.

“His peculiar and overflowing humor, strange conceptions, and original manner, united with the sturdy common sense at the base, seemed to carry the

jury irresistibly with him, and submerge all the sober arguments of his opponent in a sea of laughter.

“Even the strongest charges of the judge were powerless against him, of which the late Judge Gridley used often to complain.

“With his rare humor, which seemed to interpenetrate all his thoughts, there were springs of great pathos in him—a power of touching the sensibilities—a fancy that illuminated his pathway through the driest details of fact—a mastery of the philosophy of his subject—a copious vocabulary—a grand and sweeping style, which bore you along as on the current of a river.

“His manner of speaking was very deliberate; his temper admirably under his control, and it was impossible to ruffle him, or throw him off his guard. His repartee, though quick and demolishing, had in it no personal sting, and his adversary was often obliged to join in the laugh against himself.

“The court-room at Otsego often rang with the sheriff’s call to order, after Stewart had arisen to address the jury, and before he had opened his mouth.

“Indeed, I have seen the supreme court-room, with Judges Nelson, Bronson, and Cowen on the bench, in an uproar, at his manner of reading a dry affidavit, and the judges themselves unable to maintain their gravity.”

During his active practice at the bar, Mr. Stewart, though he took a deep interest in all public matters, devoted but little of his time to politics as a mere partisan. With no ambition for office, or political distinction, himself, he had nothing to do with the scramble for office—with party intriguers—with the degrading practices of juggling political managers of local politics, nor the leaders of conventions.

On great national questions, which were called into operation by the pressure of interesting and important circumstances, particularly the question connected



with the tariff, the character and qualities of Mr. Stewart gave him great weight and influence.

Possessing a mind originally strong, ardent, capacious, and discriminating, he observed, the manifestations and results of the theories which the various systems of home protection had elicited.

In the year 1826-27, the great question before the nation, particularly at the north, was that of the tariff.

Mr. Stewart was an outspoken protectionist; a series of articles written by him on that subject, had attracted public attention, for the clear and able manner in which he discussed the great matters of commerce, finance, and our manufacturing interests. Some of these articles exhibited the power—the penetration of Huskisson, and the comprehension of Wright; they greatly enhanced his popularity, and gave him the reputation of being a man of a strong, extended, and liberal mind.

In the summer of 1827, the interest in the tariff question had become so intensified, that “the Pennsylvania Society for the protection of Manufacturers,” &c., called a national convention, to be held at Harrisburgh, September 25, 1827.

The northern States, with great unanimity, prepared to send delegates to this convention.

A State convention was convened at Albany, in August of that year, which was largely attended, every county in the State being represented. The late Judge Buell, of Albany, was president. The convention was addressed by Colonel Young, of Saratoga, General Van Rensselaer, of Columbia, and Alvan Stewart.

A delegation, consisting of highly distinguished citizens of the State, among whom was Mr. Stewart, was chosen to represent the State in the approaching national convention.

Mr. Stewart was also one of the committee chosen to prepare resolutions expressive of the sense of the

common sentiments of the people at that period, on the subject of home protection.

These remarkable resolutions, emanating from the people of the Empire State, on the great question of protection, had a decided influence on the other States,—they were drawn with great care, and bore the indubitable evidence of the most exalted statesmanship.

At Harrisburg, Mr. Stewart was again heard on the question of a protective tariff; his speech, exhibiting a comprehensive knowledge of the subject, produced a marked effect upon an audience composed of the representative wisdom of the North.

In 1828, though then a Democrat, he abandoned the support of General Jackson, because of his opposition to the tariff, and published an address to the people of his county, from which the following extract is taken :

“The Southern States,—and they will all support General Jackson,—may be set down as feeling an unreasonable enmity to the tariff law, because it gives strength, vigor, capital, home-market, and an increase of votes to the Northern and Middle States. To these southern opponents, may be added the city of New York, part of Boston, and some other of the New England seaboard towns, which are joined to foreign idols, and constitute positive enemies of the tariff,—bound to never ceasing opposition till its repeal.

“To this corps may be added a class of men-serving, doubting, compromising, unbaked and combination-forming politicians,—always ready to embark for or against their country, as they think will best suit their own interests. And to these may be added, England’s influence over her debtors in this country; her threats, already, to ruin us with smuggling, to force her goods upon us from the Canadas; Peel and Huskisson have told the States north of the Potomac, that they do not know how to manage their own af-

fairs; and all this influence to be led on by an administration favorable to the abolition of the protective system. Might not a friend of the tariff, when he sees this force brought to bear against the American system, withdraw and sink down in mournful silence, as Æneas withdrew from the defense of Troy, when he saw Neptune shaking the wall and Juno heading the besiegers?"

It is singular that a man possessed of such almost transcendent abilities, should have had so little political ambition. He possessed that administrative ability, that effective eloquence and versatile knowledge, which, in a parliamentary body, would have rendered him powerful. But he was destined to another sphere of action, to which his genius, his learning and his eloquence became subservient.

The first anti-slavery movement in the United States which assumed any organized form, took place in 1815, under Benjamin Lundy; for years it struggled with what may be called a doubtful existence. But through the unwearied energy of Lundy, a convention was held in Philadelphia, which gave considerable vigor to the cause, and continued its existence until the advent of William L. Garrison, who, in 1830, after lecturing on the subject of abolitionism in the various cities of the north, sometimes assailed by mobs, and everywhere meeting with insult and opposition, established in the city of Boston, an anti-slavery paper called *The Liberator*, with its bold motto, "Our country is the world, our countrymen all mankind." Soon after, the more defiant and startling words, "No union with slaveholders; the Constitution is a covenant with death and an agreement with hell," were added.

This last motto was regarded as the utterance of the most extreme fanaticism, and was everywhere met with execration and invective; it increased the spirit of opposition. It resulted in dividing the opponents of slavery into several parties; the Garrisonians, who,

as we have seen, were hostile to the federal constitution, because they believed it sustained slavery, being one of the factions into which the friends of the negro were divided.

At this period, anti-slavery societies were formed in many of the northern States, under some of the divisions which have been mentioned.

In the language of Horace Greeley, there was "a large and steadily increasing class, who though decidedly anti-slavery, refused either to withhold their votes, or to throw them away on candidates whose election was impossible, but persisted in voting at every election so as to effect good and prevent evil, to the extent of their power."

For several years prior to 1830, the anti-slavery movement caught the attention of Alvan Stewart; the manner of his gradual identification with it illustrates how the spirit of reform often wrestles with an intelligent and gifted mind.

He came at length to consider what he called "the mighty question of human liberty placed under the control of twenty-seven State constitutions, their laws, and the federal constitution, and acts of Congress, and the ten thousand forms which liberty may be abused, from the most horrible slavery, to the slightest invasion of a trespass;" and he entered the crusade against slavery with all his mind, might, and ability, believing in that reciprocal equity—those elevated truths, which teach "that all men are endowed by their Creator with certain inalienable rights."

Whatever were his faults, extravagances, or fanaticism; the heroic self-denial with which he gave himself to this cause, the splendid and lofty eloquence with which he maintained his position, won the warmest attention, sympathy, and commendation.

The history of nations proves beyond successful cavil, that men are more apt to suffer from ultra conservatism, than from their destructive radicalism.

The practical cures for evils in government are



often difficult. "Many will assent to all that may be affirmed as to the reality of those evils, who, through a short sighted prudence, will object to every practical method of redress; believing, that they must be suffered as a matter of duty, because there are incidental evils in the remedies."

This point was directly met by Mr. Stewart, in maintaining that no people can be obliged to suffer from their rulers, because they choose to do what they have no inherent right to do.

In 1838, The New York State Anti-Slavery Society was formed, and Alvan Stewart was its first president.

So deeply did he enter into the measures of the society, that he nearly abandoned the practice of his profession. Such, however, was his reputation as an advocate, that he could not entirely emancipate himself from all professional duties; but he gave up his office, and only attended the courts at the solicitation of his old clients, whom he could not shake off.

He traveled through the New England and western States, organizing anti-slavery societies, collecting funds to sustain them, and addressing large bodies of people; bravely confronting passion, bigotry—organized and unorganized hostility—the extremities of lynch law, and all manner of threatened violence.

At Utica, the home of Mr. Stewart, the announcement that a meeting of the Anti-Slavery State Society would be held there, on the 11th of August, 1835, produced the most intense excitement, resulting in an organized opposition to it, which subjected him to great personal danger.

Notwithstanding the threats, that if he attempted to organize the meeting, he would be mobbed, he was promptly in his place, and as the clock struck the hour for opening the meeting, he called the assemblage to order. The first business of the meeting was speedily accomplished, before any violence could be attempted.

The scene which followed is thus graphically de-



scribed by Luther Rawson Marsh, in the introductory chapter to his valuable work entitled, "Writings and Speeches of Alvan Stewart, on Slavery."

"While Mr. Lewis Tappan was reading the declaration of the sentiments of the convention," says Mr. Marsh, "a force, in the form of a numerous committee of the citizens of Utica, who had been appointed by the court-house meeting, entered the church, followed by an enraged mob which crowded the building. The committee demanded to be heard. The multitude shouted. It was impossible for a Stentor to lift his voice above the terrific din. Alderman Kellogg, a man of great personal strength, was seized, struck, and his coat torn to pieces. The proceedings of the convention were drowned in the yells, oaths, tread, and rush of the frantic throng. Mr. Stewart vainly attempted to be heard. Angry menaces at intervals, as the crowd paused for breath, rang through the church. The aged secretary, a clergyman and revolutionary soldier, was rudely handled, and his papers seized. The brave old man would not surrender them, but scattered them defiantly in the air. The convention, unable to proceed in the deafening uproar, adjourned, and the delegates left the house amid a shower of threats and imprecations."

"I was standing near Mr. Stewart," says Mr. Storms, "at the height of the excitement, and saw a porter, named Mathews, a canal runner, and a powerful man, take hold of him. Stewart had long been enfeebled by poor health, but his dormant muscles waked up at the touch of his assailant; his whole soul seemed in his arms, as he lifted the stout porter from his feet, and tossed him like a fly away from him."

"It was always a mystery to Mathews how his strong new coat was rent in twain unnoticed at the time, as he was flung from the giant grasp of Stewart."

"After the adjournment, the hotels were visited, and the foreign delegates ejected. The excitement did not abate. In the evening, the mob demolished the

anti-slavery printing office, destroyed its furniture, and strewed the street with the offending types. Mysterious rumors indicated that a night attack was contemplated on Mr. Stewart's house.

“Mr. Stewart becoming convinced that the mob was in earnest in its designs to assail his mansion, went about the necessary preparations for defense. Carpenters were immediately employed; hasty barricades, consisting of large timbers, were put up at the doors and windows. A number of friends were assembled who were of the right stuff, and fifty muskets obtained and loaded, and all was ready for action. Stewart directed the defenses deliberately, but with earnestness and decision. One of the members of the convention from abroad, who was present, said,

“‘Mr. Stewart, I can't stay with you. I am a man of peace.’

“‘So am I,’ replied he, ‘but this house is my castle. It is my duty to defend this household, and I shall do it. I am captain of this fort, and if they come I'll mow down fifty of them in the name of the Lord.’

“It became rumored in the town that a cordial reception at Stewart's house might be anticipated. Scouts were sent forth to spy out the position of affairs. Their reports were not favorable to their enterprise, and the contemplated assault was abandoned.”

Many of the members of the convention, the next day, by invitation from Gerrit Smith, visited him at his residence in Peterboro. On their way they were assailed by various persons, and were pelted with mud, stones, rotten eggs, “as they marched through an enemy's country.”

Thirty-five years have passed away since the members of that convention were thus driven, like dogs, before an infuriated mob, simply because they were opposed to slavery; and now, how changed is the scene! The principles of that fleeing crowd have triumphed, and slavery is a thing of the past.

A person charged two lawyers with inciting the

mob, and those gentlemen of the bar brought an action for slander against the man making the charge. On the trial, Mr. Stewart appeared for the defendant, and his defense was powerful, bold, and inimitable. In all the language of irony, nothing has ever been found to equal some parts of his address to the jury.

“These abolitionists,” said he, “were fleeing from a mob at Utica; but they ran from Scylla to Charybdis—they ran from the giant of mobs at Utica, and were brought up by the squadrons of these two captains of rotten eggs—these egg and mud marshals. Instead of the deep learning and pens of these two *promising props* of the country being employed to show that the abolitionists were wrong, mud and eggs were used, as a safer kind of logic in their hands than the artillery of the mind. These men thought they were a portion of that salutary public opinion of the United States, which governors have told you was the medicine to bring the friends of liberty to their senses.”

Mr. Stewart continued to advocate his anti-slavery measures with undiminished zeal; no better proof of his success is needed than the following extract from a letter written by him to Lewis Tappan, February 11th, 1836, from Utica.

“Theodore Weld is lecturing here, and has been for four nights, in the mob convention church, at Utica, to the admiration of hundreds.

“The house is jammed every night. . . . Not a dog wags his tongue, mob like, against us. The days of mobs are gone by,” &c.

In 1842, John G. Whittier wrote to him as follows:

“MY DEAR FRIEND:

“Thou hast doubtless already seen by *The Emancipator and Free American*, that we have declared our determination to secure, if possible, thy attendance at our convention of liberty, at Boston, on the 16th of next month; and, I now, in behalf of the lib-

erty party of Massachusetts, and in accordance with my own feelings, earnestly invite thee to be present on that occasion.

“The legislature of the State will be in session, and evening meetings will be held in the State house. We *must* have thee with us. We shall have a mighty gathering, and we want thy voice among us, uplifted in the name of God and humanity. Do not disappoint us. Thy attendance at the Worcester convention was of immense service to us. . . . There is an intense desire to hear thee, and thou wilt have such an audience as could not be gathered elsewhere in the Union. . . .

“JOHN G. WHITTIER.”

Letters of this kind were addressed to him from all parts of the northern States, exhibiting the estimation in which he was held as a public speaker.

“Alvan Stewart,” said the late William Goodell, “was the first to elaborate a compact argument in defense of the doctrine that the federal government had constitutional powers to abolish slavery in the slave States,” and he therefore originated and advocated the introduction of the slavery question into politics.

“He was,” says Mr. Marsh, in his work already referred to, “satisfied that the reform could only be carried by the ballot-box; he urged the organization of a liberty party, and carried it against the stormy opposition of many who were even then regarded as advance men of the anti-slavery movement.”

This little party, beginning only with a few thousand votes, swelled its numbers at each successive election, until at last it stood between Whig and Democrat, holding the balance of power, resulting in that masterly achievement, the union of the Whigs and Abolitionists under the new name of the Republican party, whose existence, thus far, from whatever point



it may be viewed, has in it much of the material which gives a deep interest to the page of history.

But the ablest forensic—perhaps the ablest effort of any kind, which Mr. Stewart ever made, was at Trenton, on the 21st and 22nd days of May, 1845, before the justices of the Supreme Court of New Jersey, the Hon. Chief Justice Hornblower, and his associate judges.

The cases were entitled, *The State v. John A. Post*, brought before the court on writ of *habeas corpus*, and *The Same v. Van Buren*.

The object of these writs was to test the institution of slavery in the State of New Jersey, which Mr. Stewart, counsel for the slaves, contended was abolished by the first section of the bill of rights in the new Constitution of New Jersey, which went into operation on the 2nd of September, 1844.

His speech occupied about eleven hours; from its exordium to its peroration, it was listened to with the deepest interest.

He attempted no variety of imagery—no flights of poetry, and but few impassioned sentences; yet, some of it was sublimity itself. It was reason and law applied to lofty principles of human liberty—it was the natural language of a fearless freeman irradiating his great theory of constitutional rights. He struck at slavery, as Erskine did at constructive treason, in the trial of Lord George Gordon. Erskine's defense was triumphant—the moment he ceased speaking. Stewart triumphed at last; and as constructive treason is a thing of the past in England, so slavery is a thing of the past in the United States; or, as has been already said, as Otis struck for liberty in 1775, so did Alvan Stewart in 1845.

His argument unfolded a theory which was in advance of his age; it struck out great truths, which fell with mighty power upon the court—it was unanswerable.

It is not, by any means, a faultless production;



portions of it move on in a pace somewhat desultory, while other portions are not entirely free from verbosity, and it is wanting in that terse argument, that distinct arrangement by points which generally characterizes efforts of that kind before the court in banc; it broke over the banks of conventionality by the grandeur of its subject. But these, and one or two other objections, which might be pointed out, are like a few spots on a great luminous body; while they may attract the attention of a close observer, they do not diminish its light or deface its beauty.

Some time after the delivery of this speech, his health began to decline, a slow but incurable disease seemed to have seized him, yet he continued to labor with unwearied zeal in the anti-slavery cause, until the latter part of April, 1849, when his disease assumed a more acute form, which admonished him, that his days were drawing to a close, and on the first day of May, 1849, it terminated fatally; he was then in the fifty-ninth year of his age.

The esteem in which he was held, was attested by the general regret and sorrow manifested on the announcement of his death. The public journals, and the bar, in appropriate language, eulogized him, while letters of condolence from the most distinguished personages in the nation were received by his family. One of his eminent compeers in the anti-slavery movement, thus wrote of him: "That depth of pathos, those outwelling sympathies, never at ebb; that ever opening heartache for the wronged; that moral courage, which always dared, yet never knew it dared; all these, with a kindred host, came thronging around me, at the thought of Alvan Stewart."

In an obituary notice, written by one familiar with his career, it was said, "He was among the earliest, and certainly among the ablest supporters of the temperance cause. He espoused these enterprises when it cost something to make the sacrifice. With no earthly or time-serving motive to gratify, while to

'entirely refrain' from the agitation of unpopular subjects, would have saved him from a world of odium and malignant misrepresentations, he obeyed the convictions of his inner man, threw himself into the breach, giving to persecuted reform the support of his superior talent and influence."

His form was tall, well proportioned, and commanding; his eyes, large and hazel, would, while speaking, often dilate with a sort of electric expression. His manner was impressive, solemn, and self-possessed; while his audience would frequently be convulsed with laughter at some sally of wit—but such laughter seemed to intensify the solemnity of his countenance.

This contrast between the unrelaxed sobriety of the speaker, and the uncontrollable merriment of his hearers, augmented the effect three-fold.

Frequently, not only in his speeches, but even in his conversation, his emotions would so overmaster him, as to find expression in an outflow of tears. Notwithstanding the harshness and extravagance which occasionally occur in his speeches, almost everything he said had spirit, originality, power, and pathos. No splendid but unmeaning accumulation of phrases, no rhetorical, tawdry, or habitual expletives, marred the chaste beauty of his language.

At times, his powers of description reached even the grand and sublime, producing pictures as vivid as those drawn by the pencil of Rembrandt or Reuben. An instance of this occurs in his argument before the Supreme Court of New Jersey, already referred to.

"Warning after warning, miracle after miracle, had been lost upon the obduracy of Egypt's king. One morning, as the population of that kingdom of fifteen millions of people arose and looked at their beloved Nile, lo! and behold, it was one vast river of blood, from the cataracts where its tumbling torrents of blood fell in mighty roar, and pursued their sweeping course, for six hundred miles to its seven

mouths, where the Mediteranean, receiving its tribute from its servant, blushed for twenty leagues at Pharaoh's impudence. The stranger from afar, the trader, seekers of knowledge, and the citizens, stood, that livelong day, and wondered at the bloody Nile: and as reasons were asked and given, I think I hear them say, the reason why the Nile runs blood is that Pharaoh holds the Hebrews as slaves, and the Hebrew's God demands their release, and shows his anger and his power at Pharaoh's refusal. The stranger would carry this news to the utmost bounds of living men, saying, one entire day, I saw the Nile run blood, to express the abhorrence of the Hebrew's God against the crime of slavery. . . .

“On a certain other day the obstinate Pharaoh refused, after many promises, to let the poor Hebrew slave go free. It is noon; the burning power of a June sun strikes the land; anon, all eyes in Egypt are directed to a black and threatening cloud, rising out of the west over the Lybian desert. This was the first thunder storm in Egypt. . . . It skirts the western heavens, and the terrific clouds raise themselves higher and higher; men turn pale; anon the low and solemn tones of thunder are heard; men tremble and say it is the voice of the slave's God—in a moment, the flashes of forked lightning play with infinite quickness; men fall on their knees, and declare it is the flashing of the angry eyes of the Hebrews' God at the Egyptian cruelties. The clouds rise to the high altitude of noon; the lightning, the winds and roaring thunder, send consternation into the hearts of affrighted men. It appears like night, nature in agony, men fear to speak, and believe they are on the eve of doom; men and beasts hide themselves in extreme terror; the thunder makes the earth tremble from pole to pole; the pyramids rock from their deep foundations, the rains descend, the hail beats the earth, fire and ice leap from the clouds, while the lightning strikes down the trees, plays around the

pyramid tops, smites the sphinx, and runs along upon the ground, men in agony praying for deliverance. Pharaoh and his court lie prostrate in his palace, the earth seems shaken out of its place, and all nature in convulsions. The king implores mercy, and the Father of All hears, pities, and delivers the faithless king and people, and ere the sun went down, that storm and desolation had forever gone by, and the last cloud sunk below the horizon in the Red sea, while the beautiful sun rolls down the western heavens, smiling in mercy from beyond the dark solitudes of the interminable Lybian sands. This storm, all men knew, was an evidence of God's displeasure at slavery. But Pharaoh would not let the people go.

“It is in Egypt, and it is midnight, when the young wife, but two years married, awoke and placed her hand on the shoulder of her youthful husband; he was as cold as marble, he would not awake at her mournful cry—he was dead; he was the first born of his parents. She arose in wild despair, she lit a flambeau, looked at her little babe on the mattrass; the fixed smile was there, rigid in death, never to be relaxed; *he* was the first born of his parents; she flies to her father's and mother's bed in the next room; she awakes her father, but none but the archangel can awake her mother from death's sleep most profound; she was the first born of her parents. She sends her man servant to her neighbors for help in this awful hour; the servant enters the neighbor's; a light is there waiting and horror meets him. . . . One sixth of the people, or a life of one of Egypt's slaveholders, had been taken for each slave detained.”

How terrible, and yet how truthful is this picture! It is drawn with a fearless and bold hand—the hand of a master. Imagination kindles with the almost painful richness of its figures. In its background are shadowed forth the fearful scenes which accompanied the freedom of the American slave.



There was a painting in the gallery of one of the dukes of Orleans, representing the infant Moses about to be exposed by his mother to the waters and the monsters of the Nile. The figures were painted with extreme beauty and force. The face of the mother averted in agony, speaking in all the eloquence of grief, the terrible necessity which impels her to the act; the departing father, with eyes upturned to heaven, as if supplicating its aid for the darling—the helpless boy who clings to him in terror. All this strikes the beholder with horror and sadness.

It is said that in this absorption of human interest, the exquisite background of the picture, with its wooded scenery and architectural magnificence, is forgotten. Nothing is observed but the thrilling scene in the foreground. So it was with the scene drawn by Alvan Stewart, as he stood in the Supreme Court of New Jersey; the interest in the background was unobserved, but its portentous meaning was there, and has since been fearfully exhibited.

With singular versatility Mr. Stewart could pass with equal facility to gentler scenes—to those affections which spread beyond ourselves, and stretch into eternity, which develop the divinity within us—to the themes which religion unfolds—to the joys of friendship—to all the sweets of domestic life. His conversation was as remarkable as his speeches—fresh, original, and instructive—gathering brightness from every subject.

He loved his profession to the last, and he regarded his professional brethren with peculiar affection. This was attested in the beautiful eulogy which he pronounced on that great and distinguished lawyer, Elisha Williams, at a meeting of the bar at Utica, in July, 1833:

“What court-house in the State,” said Mr. Stewart, “has not been the theater of his exploits and scene of his glory? How many thousand auditors have hung upon his accents in breathless silence,



listening to the impassioned eloquence of this intellectual giant. But Death, the great leveler, has forever silenced that tongue which uttered the most unrivaled eloquence—that man who was but yesterday, as it were, a connecting link between angels and men, is now in the low, dark sepulcher of death, a prey to noiseless worms. But the friends of religion will rejoice to know that, some years ago, he submitted his heart to the divine influence of our most holy religion, and that he died in the triumphs of its glorious faith. Star after star, that has shed luster upon our profession, is setting in death. May we all so live, that we shall meet at the great bar where the Judge of earth and heaven shall gather us to part no more.”

The deep earnestness of Mr. Stewart's nature, the loftiness with which he moved in a sphere where there were few applauding voices, and the calmness with which he accepted a position that brought upon him scorn and anathema, rendered him a hero; and it is no affectation to say, that he was a man of genius, of fine sense, a powerful orator, and a philanthropist. He was deeply enthusiastic on one subject; but his enthusiasm was aroused by what he conceived to be a mighty evil, and, regardless of public opinion, he made eternal war against it. Forgetful of the clamors of party—of the reproaches of the softly conservative—of the frowns of “little great men,” he appealed to philanthropy—to the enlightened judgment of mankind—to the future. Has the time for an impartial decision arrived?

## JAMES T. BRADY.

The Practice of Law Before Juries.—The Many Colors of Life which it Presents.—The Triumphs and Contests of the Advocate.—His Relation to his Client.—The Remark made of a Great British Advocate Applies to James T. Brady.—He won his Fame at the Bar.—His Honors Unmingled with Political Distinctions.—His Life and Career an Example for the American Law Student.—His Birthplace.—Early Education.—A son of Thomas S. Brady.—His Mother.—Character and Accomplishments of his Father.—James and Others are his Pupils in the Study of the Classics.—James Studies Law with his Father.—His Admission to the Bar.—His Early Practice.—A Singular and Touching Case.—Brady Engages in it.—The Brother and Sister.—The Bond Servant.—The Habeas Corpus.—John Slosson.—The Trial.—The Triumph.—Brady is Appointed Corporation Attorney.—City Litigation.—Manner of Conducting it.—Appointed Temporary District-Attorney.—Trial of the Boat Thieves.—Brady's Disposal of the Case.—Himself and the Judge Equally Guilty.—Brady one of the Counsel in the Sickles Case.—His Duties on the Trial.—The Cross-Examination.—Anecdote.—The Trial of the Irishman for Murder.—Brady's Description of it.—The Case of Huntington.—The Plea of Moral Insanity, cases of.—The Cole-Hiscock Case.—Reflection on its Result.—Other Criminal Cases.—The Forrest Divorce Case.—Mr. O'Conor.—John Van Buren.—Mr. Brady Engages in the Argument in the Court of Appeals.—Character of his Argument.—Mr. Brady's Literary Taste and Acquirements.—Is Gravity Wisdom?—Brady a Patron of the Drama.—His Letter on Dramatic Writers.—His Position in Politics.—His Idea of Washington Politicians.—His Mission to New Orleans.—Baldy Smith.—Mr. Brady as a Political Writer and Speaker.—Always fit for the Occasion.—Anecdote of Mr. Marsh.—Brady is Counsel for the Savannah Privateers.—Jefferson Davis.—The Circumstance Related by Charles O'Conor.—Brady's Friendship and Characteristics.—James W. Gerard.—Banquet to.—Mr. Brady's Last Public Speech.—His Last Professional Engagements.—His Death.

It has been said that there is no section of the world's hopes and struggles which is replete with so much animation of contest, such frequent recurrence of triumphant results, as the practice of the law before juries;—that the grotesque and passionate forms of many colored life with which the advocate becomes familiar; the truth stranger than fiction of which he is the depository; the multitude of human affections and fortunes of which he becomes, in turn, not only the representative, but the sharer; passions for the hour, even as those who have the deepest stake in the

issue ;—render his professional life almost like a dazzling chimera—a waking dream ;—and moreover that to him are presented those aspects of the case which it wears to the party who seeks his aid. Is the rule of law, too, probably against him? There are reasons which cannot be explained to the court, but which are the counsel's in private, why in this instance, to relax or evade it, will be to obtain substantial justice. In the majority of cases, he becomes, therefore, always a jealous, often a passionate partizan ; lives in the life of every cause (often the most momentous part of his client's life) ; “burns with one love, with one resentment glows,” and never ceases to hope, to struggle, or to complain, until the next cause is called, and he is involved in a new world of circumstance, passion and affection. Nor let us forget that at one time the honor of a man's life may tremble in his hands—he may be the last prop of sinking hope to the guilty, or the sole refuge clasped by the innocent ; or, called on to defend the subject against the power of a State prosecution. Sometimes piercing the darkness of time, guided by mouldering characters and names ; or tracing out the fibers of old relationship—exploring dim monuments, and forgotten tombs, retracing with anxious gaze those paths of common life, which have been so lightly trodden, as to retain faint impressions of the passenger. One day he may touch the heart with sympathy for the “pangs of despised love,” or glow indignant at the violation of friendship ; the next, he may implore commiseration for human frailty, and talk of nothing but charity and forgiveness.

It was said of a great British advocate, that in such a sphere as this, he moved triumphant.

It was in such a sphere as this, that James T. Brady moved and won his fame—a fame unmingled with political honors or official distinctions. His career depended upon no ephemeral titles—no loud

plaudit to the politician, who to-day mounts ambition's pedestal, to be sought for in vain to-morrow.

It is a pleasure to the lawyer who loves his profession—it must be pleasant to any man interested in the triumph of the intellect, to study the character of a man like Mr. Brady. What a commentary is his life and career for the student—for the young practitioner. He asked nothing from influence, from eminent friends—nothing from adventitious circumstances. With self-reliance—with industry, erudition, activity, and an untarnished name—surrounded by the great lawyers of a metropolis, he demanded the honors and emoluments of his profession—he reached for the highest prize—contended for it against the most gifted competitors, and won it amid the sharpest collisions.

He relieved the tedium of his professional labors, by entering the quiet domain of literature, refreshing his intellect—refining his views of life, keeping unquenched the enthusiasm which warmed the spring time of his life, over the pages of Tacitus, Livy, Thucydides, Pope, Shakespeare, and Tasso.

If his oratory carried conviction—if it caused men to act and think, his pen gave calmer reasons for thought, action, and depth of comprehension.

James T. Brady was born in the city of New York, April 9th, 1815. His parents were both from Ireland; they emigrated to this country, in the year 1812, settling in Newark, New Jersey; in 1814, they removed to the city of New York, which became their residence for life. His father was the late Thomas J. Brady, a gentleman of refinement and culture, who was noted for his extensive intellectual acquirements; being regarded as one of the most accomplished scholars in the city.

“His mother exercised a deep influence upon his character; she was noble and handsome in person, having a fine native intellect. She was a mother clothed in those nameless maternal graces, and possessing those quiet virtues which shed their hallowed

influence over families, and which is felt so long. She died when he was quite young; but he never during life, loved a human being as he loved her. Her name was never mentioned in his presence, without giving rise to some expression, the depth and tenderness of which, showed how her memory was embalmed, and rarely without the tears coming into his eyes."

His father, though born and educated in Ireland, spoke both the Spanish and French languages with fluency and grace. He wrote the latter with the ease and elegance of his vernacular idiom; while he was perfectly familiar with the ancient and the English classics.

Having completed his education, he decided to enter the legal profession, but he did not commence his studies until after he became a resident of New York, when he entered the office of the late John S. Riker, an eminent member of the New York bar, and a brother of Richard Riker, who, for a long time, discharged with great ability, the duties of recorder of the city of New York.

The accomplishments of Mr. Brady were so thoroughly appreciated, that he was induced by several distinguished citizens of New York, to prepare a limited number of young gentlemen for college. In this sphere he was very successful. Many young men who afterwards attained positions of eminence, pursued their preparatory studies with him, among whom was Bishop McCloskey. After his admission to the bar, he gained a very respectable position in his profession, and was the incumbent of several important and responsible offices. The present Judge John R. Brady, of the Supreme Court, was one of his sons.

While James was very young, his father commenced superintending his education, with such success, that, though he never had any other instructor in the classics, which by the custom of England is called learning, he was inferior to few professed scholars; his attainments were solid and practical.



He very early adopted the study of law, as a regular branch of his education. In this way he became master of the great elemental writers; in this way he laid the foundation of his legal education, broad and deep.

His father believed that a science which distinguishes between the right and wrong, which teaches to establish the one, and prevent, punish, or redress the other; which employs in its theory the noblest faculties of the soul, and exerts in its practice the cardinal virtues of the heart, should be thoroughly studied by all who desire a finished and liberal education.

The elder Brady taught his son that laborious study and diligent observation of the world, are both indispensable to the lawyer.

“James,” said he, one day, “the study of law is like scaling the Alps—you must adopt the indomitable energy of Hannibal, and your ascent will be easy; of all things beware of half knowledge—it begets pedantry and conceit; it is what the poet meant when he said,

“ ‘ A little learning is ■ dangerous thing.’

“Make your learning practical, for a bookworm is a mere driveler—a gossamer. There is a deal of legal learning that is dry, cold, dark, revolting; but it is an old feudal castle, in perfect preservation, which the legal architect who aspires to the first honors of his profession, will delight to explore, and learn all the uses to which the various parts are to be put, and thus he will better understand and relish the progressive improvements of the science in modern times.”

With such familiar conversation as this, Mr. Brady implanted in the mind of his son, the great principles of jurisprudence. Who that has seen James T. Brady at the bar,—listened to those perfect and complete arguments which he made there, saw

with what facility he comprehended and unraveled the intricacy of conflicting precedents, "disentangled doubt, and exposed sophistry," but understood that he lingered long and patiently in the old feudal castle, and became familiar with its grand old architecture.

As a student, he was so modest and retiring, that his capacity was often underrated.

Mr. O'Connor once said of him, "To some extent, I performed the office of assistant counsel to his father; I often conferred with that father near the desk where sat his son James—ever commended by him as the hope of the family. The modesty and silence of the youthful student seemed to require some such patronage; for so marked were they, that notwithstanding the graces of his figure, which were great even then, and the gravity, sobriety, and good sense, which beamed forth from his countenance, his demeanor might well lead a hurried observer, such as I was, to pronounce him not promising."

Mr. Brady was called to the bar in October, 1836; he immediately opened an office in New York, and commenced practice. He directed all the powerful energies of his character to his profession, and without parade, without anything to catch the public favor, except his unwearied devotion to business, and those shining qualities which he exhibited, he rapidly gained the confidence of the people.

He had been at the bar but a little over a year, when one day a decently dressed, intelligent appearing young man, apparently about twenty-two years of age, came into his office, and inquired if Mr. Brady was in.

"I am Mr. Brady," was the reply.

"Well, Mr. Brady, I have been directed to come to you. I am in very, very great trouble, and I need a friend."

"Do you need a friend or a lawyer?" asked Mr. Brady.

"I need a lawyer, sir; one that will feel for me and

my poor little sister," said the young man, bursting into tears. "I am a stranger in this country, sir," he continued; "only six weeks yesterday I landed here from England."

"What is your name? and what do you want me to do for you?"

"My name is James Coppin, sir, and I want you to help me get my sister. She's a slave! a slave! sir, over in Williamsburgh."

"A slave? she cannot be a slave; there are no slaves at Williamsburgh," said Mr. Brady.

"Yes, sir, she is a slave; she is bound to a man by the name of Gatewood—a rich man, sir—until she is of age. I have searched for her a long time, and yesterday I found her, and I wanted to take her with me back to England; but the man drove me away, and threatened to arrest me and send me to prison, if I attempt to take my sister away from him. He says he owns her, and has got her bound to him, by some men that have something to do with poor people."

Mr. Brady had now become interested in the young man, and he drew from him a story which was indeed, romance in real life.

In the summer of 1837, the father and mother of young Coppin, with two sisters, younger than himself, embarked from Liverpool for New York, with the intention of emigrating to one of the western States, leaving James in England, where he was engaged in some business. During the voyage, the father, mother, and eldest daughter, sickened and died of a disease resembling ship fever. After the usual quarantine, the youngest daughter, then about fourteen years of age, landed in New York without a friend or guardian, except a young Englishman and his wife, neighbors of his father, who were also emigrating west. The Coppins had an acquaintance in Brooklyn; thither the young Englishman conducted the girl, but the friend had left to be absent two or three months. As the girl desired to return to England, the Englishman

engaged a boarding place for her, until she could hear from her brother, or make arrangements to return to her native country. Leaving with her a considerable sum of money, which her father had left her, he pursued his journey westward. The family with whom she was left, soon robbed her of all her money, and then turned her into the streets, friendless and penniless, directing her to the overseers of the poor. From the representations of this family, they believed her to be a pauper; she was taken up as such; the superintendents of the poor for the county of Kings, instead of taking her to the county poor house, observing that she was a bright, intelligent child, under the statute relating to paupers, bound her to a man by the name of Gatewood, residing at Williamsburgh. In her new home she was cruelly neglected, and subjected to many hardships. It was a part of her duty to take care of three young and troublesome children, and her days passed wearily and sadly on in drudgery and sorrow.

At length the brother learned that his parents and sister were dead, and immediately came to New York in search of the surviving sister. Through streets and lanes—in the homes of the wealthy—in the abodes of poverty, he sought her with unceasing perseverance; he advertised for her—he obtained the aid of the police, but days and weeks passed away, without the least intelligence of the lost one. At length, wearied and discouraged with his toilsome, fruitless search, he was on the point of returning to England without her, when, one day as he was passing the Howard House, in Broadway, a small child ran out of the front door on to the walk, pursued by a girl apparently about thirteen years of age; catching the child in her arms, she ran with it into the hotel. As she turned to enter the house, Coppin caught sight of her face, and he saw that his sister was before him. Rushing after her, he followed her up a flight of stairs, into a room where there were a gentleman and two

ladies; regardless of their presence, he seized his sister in his arms, exclaiming:

“Sarah! Sarah! is it you? have I found you at last?”

The poor girl screamed with fright, and the gentleman endeavored to take her from the strange intruder; but he only held her the more closely. When she ascertained that it was her brother who had thus suddenly appeared, her joy knew no bounds. She laughed and wept. She laid her head on his breast, and sobbed:

“Oh, James, James! you have come to take me with you; I know you have. Oh, do take me with you—with you, James.”

“Yes, yes, Sarah; you may go with me now,” said he, and the child sprang for her bonnet.

“Stop!” said the man, “you can’t go with him; you must stay with me.”

“She is my sister, sir, and she must go with me; I have been searching for her with a broken heart, and my eyes dimmed with tears, for weeks; and you will not part us now. So come with me,” said James, taking the hand of his sister.

“Stop! I tell you,” said the man. “This girl is my servant, my servant. You have nothing to do with her. Leave the room immediately, or I will call the police and have you arrested.”

“Oh, sir! she is my sister, my darling little sister; we are orphans in the world. Our parents and another sister died on their passage to America, and this poor lamb, that we were all so tender of and loved so well, has been lost—lost to me, sir, until now. Now I have found her, she is all I have got to love or care for in the world. You cannot keep her, for she is the daughter of as honest a man as ever breathed in Old England,” said Coppin.

“I’ll show whether I can keep her or not,” said the man, ringing the bell. A servant appeared, and with his help, poor James was forcibly ejected from



the room. But having found his sister, he was determined never to leave her.

He learned that the name of the man with whom she lived, was Gatewood—that he resided at Williamsburgh—that he had been traveling with his family and was returning home, stopping in New York for a few hours.

The next day, Coppin visited Williamsburgh, and after much entreaty, Gatewood permitted him to see his sister for a few moments, in his presence. Here he learned that she was indeed bound to him by written indentures until she was eighteen years of age, and that he was determined to keep her. He was a sullen, determined, obstinate man, with whom entreaty or negotiation was useless. Nothing could exceed the agony of poor Coppin, on learning that his sister was, as he believed, a slave. Determined, however, to effect her release, if possible, he returned to New York, inquired of an Englishman whose acquaintance he had made, for a good lawyer, and he was directed to Mr. Brady.

The rehearsal of this story, in the simple, touching language of young Coppin, frequently interrupted by his grief, aroused all the warm sympathies of Brady's nature, and he promised his client that he would take immediate action in the matter, and he redeemed his promise.

He learned that the superintendents had bound Sarah in the usual indentures, under section 5, chapter 8, volume 2 of the Revised Statutes; and that they were in due form of law; but, on a full investigation of all the circumstances of the case, he believed that the whole proceedings were illegal, and he caused the girl to be brought up on a writ of *habeas corpus* before Hon. Nathan B. Morse, then first judge of Kings county.

The superintendents, anxious to sustain their official acts, prepared to defend Gatewood to the last. The late John Slosson, an eminent lawyer of the New

York bar, was retained by them, and a return to the writ was made, stating that Sarah Coppin was held by Gatewood as his servant or apprentice, under certain indentures executed by the superintendents of the county of Kings to him, "the said Sarah being, at the date of said indentures, a pauper."

The hearing of the case took place on a day fixed for that purpose, before Judge Morse, at the court house in Brooklyn. The singular and interesting character of the case gave it much publicity. It was reported in the daily papers, and, on the trial, the court house was thronged with deeply interested spectators.

The young lawyer appeared with his brief, and his authorities; by his side sat young Coppin and his sister. It was an important event in the professional career of Brady. He stood between the poor young girl and a doom next to death. It was a case of the heart,—it lay warm in the deep sympathies of his nature,—it kindled those generous emotions which through his whole professional life so often manifested themselves. Then there was professional ambition; a case which involved the most important interests to his client,—a competitor of the highest reputation,—eminent at the bar, and in intellectual acquirements,—a vast audience, composed of many of the most eminent persons in New York and Brooklyn. In his whole future brilliant career at the bar, no case so completely absorbed all his energies as this did.

He opened it with modesty and brevity, simply stating what he proposed to prove in avoidance of the indentures. When he closed his opening, Mr. Slosson arose, and asked the court to remand Sarah Coppin to the care of her master, Mr. Gatewood; that the indentures, on their face, were legal, and, therefore, conclusive in and of themselves; that the court would not go behind them to ascertain the circumstances under which they were executed. He

made a strong and effective argument ; such an argument as John Slosson was capable of making.

But Brady was prepared on this point ; he had entrenched himself with all the law bearing on the point which he could find, and, after elaborate arguments, the court decided to allow him to introduce his evidence.

It has been said that a trial of an issue of fact is not a hearing of all the matters capable of discovery, which are relevant to the issue, or which would assist an impartial mind in forming a just decision ; that it is an artificial mode of determination, bounded by narrow limits, governed by inflexible rules, and allowing each party to present to the court as much or as little of his own case as he pleases ; that besides the opportunity which the forms and mode of trial give to the exercise of skill, the laws of evidence afford still greater play for ingenuity, and ground for caution.

In a field like this, young Brady had now entered to contend alone with one who was perfectly familiar with all these subtleties.

He proved by the keeper of the county poor-house that Sarah had never been an inmate of that institution. He established, by the overseer of the poor of Brooklyn, the fact that he had never, in any way, assisted her. With this, and some other proof, he rested his case.

To substantiate the fact that Sarah was a pauper when the indentures were executed, Mr. Slosson called the man and woman with whom the young Englishman left Sarah. They testified that in a day or two after her friend left, they discovered that she had no money, and, being unable to keep her, they sent her away, and afterwards directed the overseers of the poor to take care of her.

On cross-examination, while he did not exhibit "the talismanic power of bringing falsehood out of truth," he established the force of the Bible adage,

“Be sure that your sins will find you out,”—for he compelled the man to admit that when Sarah came to his house she had a considerable sum of money in gold, though he denied having any of it himself, or any knowledge as to what became of it ; such was the searching nature of Mr. Brady’s questions that suspicion of his having taken it was strongly fastened upon him.

At length the evidence was closed ; Mr. Slosson contended to the court, with great force and ingenuity, that there was nothing in the evidence showing that Sarah Coppin should be discharged from the indentures. She was, in every sense of the word, a pauper when they were executed ; and if she had not received actual aid from the poor authorities, she was in a situation to become chargeable to the county. Within the meaning of the statute, that word “chargeable,” used in the statute, meant a liability of her becoming chargeable, which was analogous to the condition of a putative father in an order of filiation. The public policy, and the due administration of the poor laws, demanded that the indentures should be sustained, and the girl remanded. Finally, his whole argument exhibited the profound and experienced lawyer, carrying with it such weight that many members of the bar who were present, believed that though sympathy was with Brady, the law was against him.

When Mr. Slosson closed, the young lawyer arose ; this was his first attempt to address the court on an important occasion, and he began with hesitation and diffidence, which caused much uneasiness on the part of his friends ; but “the low tremulous beginning gave way to the gradually strengthening assurance, to the dawning recognition of sympathy excited in the man on whose lips the issue hung ; till the whole world of thought and feeling seemed to open full of irresistible argument and happy illustration.” At times the sympathy of his nature triumphed over

cold logic, and his powerful appeals swept over court and audience, as it did years after, in his defense of Daniel E. Sickles.

The death of the parents,—the landing of the poor orphan on our shores—her robbery—her desertion, her misery—the brother's pilgrimage across the Atlantic—his long, weary, search in the bitterness of an almost broken heart—the providential meeting—the awakening to the sense that the moment when fortune had seemingly given the lost one to him, she was in a bondage which must separate them forever; was portrayed in language which produced uncontrollable emotions of sympathy.

That part of his speech in which he discussed the legal points of the case, was equally happy. He contended that the proof established the fact, that Sarah Coppin had never received the least assistance from the overseers of the poor, had never been in the county poor-house, and had never been chargeable in any way to the county, when the indentures of the superintendents were executed; and therefore they had no jurisdiction or authority over her person. He denounced the system which thus permitted officials to dispose of the person of the poor, and contended that before it could be done, every indentment of the law should be strictly complied with. Finally, he insisted that the opinion of Judge Yates, in the well known case of *Schemerhorn v. Hull*, 13 *Johns.*, 269, fully sustained his first proposition, that before the superintendents had any authority to execute the indentures, Sarah should have been reduced to the condition of a pauper, having received assistance from the poor authorities.

The judge sustained Mr. Brady in his views of the law and the facts in the case, and Sarah Coppin was delivered into the custody of her brother.

The manner in which Mr. Brady conducted this case, and its successful result, gave him a conspicuous



position before the public, and established his reputation as an advocate.

Much of his practice was confined to criminal law, although he did not devote his entire attention to that branch of his profession.

Criminal law practice is peculiarly attractive to sympathetic and active minds; it gives ample room for the exercise of genius—that quality without which judgment is cold and knowledge inert—that energy which collects, combines, amplifies, and animates. It demands a close and critical knowledge of the common and statute law—an intimate acquaintance with the rules of evidence. The sweeping innovations which the Code has made in the civil law of our State, have left the nice technicalities of the criminal law. No advocate can attain eminence as a criminal lawyer, who is not thoroughly, accurately, and deeply read.

In the year 1843, during the temporary absence of Mathew C. Patterson, Esq., then District-Attorney of New York, Mr. Brady was appointed to act in his place. While discharging the duties of this office, an incident occurred which illustrates the character of the latter.

Among the indictments which it became his duty to try, was one against two boys, charged with larceny in stealing a row-boat. The owner, for some reason, strongly desired the conviction of the youthful culprits. They belonged to respectable parents, and the serious appearance of the case, caused them the greatest distress.

On the trial, Mr. Brady thoroughly sifted the evidence, and closely dissected the whole case on the part of the people. It turned out, that the young prisoners had merely taken the boat for the purpose of crossing the East river, to visit an orchard on the Long Island shore, where large quantities of luscious apples hung temptingly from the trees. Mr. Brady was convinced that, though the act might possibly amount to a technical larceny, the boys did not intend to steal the

boat. Therefore, on resting the case for the people, he addressed the court as follows :

“This offense, your honor, if it be an offense at all, is one of which most men, or, I should say boys, in the course of their lives, have been more or less guilty. It commenced at a very early period in the world’s history, in a very luxuriant garden, and has been continued down to the present time. These boys, your honor, are guilty of nothing more criminal than you and I have been engaged in a hundred times, and, therefore, with your consent, I will enter a *nolle prosequi* to this indictment.”

The court consented, and the boys were discharged. They grew to great respectability, and ranked among the prominent business men of the city. What would have been their condition in life, had they been convicted and imprisoned? Their association with thieves, robbers, and wretches of all kinds, would have alienated them from virtue, and they would probably have left their captivity, to enter on the practice of that depravity which they had learned in prison.

In the year 1845, Mr. Brady was appointed corporation attorney for the city of New York; his powers, his acquisitions, and his temperament, peculiarly qualified him for the discharge of the duties of this office, and when his term expired he was reappointed. On entering upon the duties of this office, he found the corporation engaged in several intricate and important actions. Suits had been brought for and against it. His learned and able predecessor had left them in a condition which gave Mr. Brady no trouble to prepare for trial. Several of them were tried, and all, excepting one, resulted in his favor. He brought to the trial of these causes, great vigor and grasp of thought; his plan and outline were marked by great distinctness, and he filled them up with surpassing ingenuity. At the bar, his case would often be apparently shattered by the opposing counsel, “but he would gather it up, condense and correct it.” Like

a skillful general, he would place himself with great facility, on the vantage ground of the contest. "He never betrayed anxiety in the crisis of a cause, but instantly decided among complicated difficulties. He could bridge over a nonsuit with insignificant facts, and tread upon the gulf, steadily, but warily to the end."

In many phases of his character he resembled Henry Cockburn. Like that great lawyer, once the pride of the Scottish bar, Mr. Brady, while he could assume any mood, and sympathise with all, was master alike of the stern and the pathetic. His flow of good humor was never failing, and neither care nor anxiety could quench it. He had high thoughts, noble ambition, and deep reflection on men and things.

When Daniel E. Sickles, in his prison at Washington, after the assassination of Francis Barton Key, was planning his defense, and glancing over the names of the great lawyers of the nation, to ascertain which would be most successful for him, he selected Mr. Brady as the associate of Stanton, Graham, Bradley, and Caggar.

The opening argument for the defense was made by John Graham. It was as brilliant and logical as it was successful; it blended, in the happiest manner, reason with heart-searching pathos. At the request of his eminent associates, Mr. Brady made the opening statement of the defense to the jury. He discharged this important duty with great ability and ingenuity, proving the truth of Lord Brougham's remark, that a skillful statement of the case to the jury, by an advocate who has a vivid perception of the true relations of things, is a most powerful means of success, and cannot be easily overdone.

"I shall, gentlemen," said Mr. Brady, "prove to you circumstances which, for a hundred years past, have been regarded as a justifiable retribution for domestic peace destroyed, for hopes blasted, home desecrated—all that the heart has garnered up as its last, its only

solace, withered by some brilliant and insidious seducer, whom the arm of the law cannot reach.”

On Mr. Brady devolved the duty of examining the witnesses for the defense, and cross-examining those for the prosecution. This, under the circumstances, was one of the most delicate and difficult tasks ever committed to a lawyer; for the acquittal of Sickles depended on the fact, that in the case of two important witnesses for the defense, he was obliged to conduct the examination so as to leave no opportunity to re-cross-examine them on the ground that new matter had been introduced; he was thus compelled to keep something concealed, and yet bring out certain facts intimately connected with this, in order to obtain a verdict of not guilty for the prisoner.

A successful cross-examination is one of the most difficult and important duties which an advocate can perform; it requires a knowledge of human nature—of the springs of human action—a subtle and nice discrimination. “When it is not founded on materials of contradiction, or directed to obtain some information which the witness will be willing to give, it proceeds on the assumption that the party interrogated has sworn an untruth, which he may be induced to vary.” But it is often the means by which trustworthy evidence is mischievously weakened or set entirely aside.

An eminent instance of this occurred on Lord Kenyon’s cross-examination of a witness on the trial of Lord George Gordon. The witness testified that a certain flag was carried in a procession, when he was interrogated as follows:

*Kenyon.* “Can you describe the dress of this man you saw carrying a flag?”

*A.* “I cannot charge my memory; it was a dress not worth minding—a very common dress.”

*K.* “Had he his own hair, or a wig?”

A. "If I recollect right, he had black hair ; shortish hair, I think."

K. "Was there anything remarkable about his hair?"

A. "No ; I do not remember anything remarkable ; he was a coarse looking man ; he appeared to me like a brewer's servant in his best clothes."

K. "How do you know a brewer's servant in his best clothes from any other man?"

A. "It is out of my power to describe him better than I do. He appeared to me to be such."

K. "I ask you by what means you distinguish a brewer's servant from any other man's?"

A. "There is something in a brewer's servant different from other men."

K. "Well, then, you can tell us how you distinguish a brewer's servant from any other trade?"

A. "I think a brewer's servant's breeches, clothes, and stockings, have something very distinguishing."

K. "Tell me what in his breeches, and the cut of his coat and stockings it was by which you distinguished him?"

A. "I cannot swear to any particular mark."

This witness undoubtedly told the truth. Yet it is related that he was hooted from the witness box, as if he had sought to impose on the jury. Erskine, who was engaged with Kenyon in the case, in his address to the jury, adroitly took advantage of the temporary prejudice.

"You see," said he, "gentlemen, by what strange means villany is detected."

Lord Kenyon had been at the bar but a short time when that trial took place, and this cross-examination alone, established his reputation as an advocate.

In the defense of Sickles, Mr. Brady conducted the cross-examination with a scrutiny, skill, and penetration, which greatly strengthened his case, and weakened the force of the prosecution.

In the zenith of his professional fame, he once re-



lated, how in his student days, his young ambition was fired by witnessing Blunt and Hoffman defend a man charged with murder.

“Fortunately, or unfortunately,” said he, “there was a throb of hope in my breast, that the time would come, when even so great and solemn a responsibility as that of defending a man whose life was in jeopardy should devolve upon me; the time at length arrived. It so happened that a poor Irishman was charged with the crime of murder. He was a humble person, with few friends and no money. Of his friends, the fondest, most devoted, and persevering, was a true-souled little woman, born like her husband, and my ancestors, in that beautiful country, on whose bosom so many generations of noble beings have laid themselves down in quiet repose. She sought my aid in the hour of peril to him she loved, and I could not refuse it. None of my profession would. But it was with fear and trembling that I undertook the duty. If I had known the future terror that it was to bring upon my heart and brain, I would have faltered long, ere I had engaged in the cause. If ambition alone had impelled me to the undertaking, I would have dashed that impulse to the ground, and smiled upon the fragments of its ruins.

“Without considering at large, how the fortunate result in that case was accomplished, I may say that, in a purely legal point of view, the act proved was in any of its aspects a clear case of murder. It had not that awful feature, however, in its *moral* bearings, and my aim was of course, to present, with whatever slender experience I possessed, all the extenuating circumstances that could be urged in behalf of the unhappy prisoner. I remember, with perfect distinctness, that on the eve of the trial, I walked homeward with the clerk of the court, and the then vigorous and effective district-attorney, who informed me that the guilt of the accused was so flagrant, that it would be his solemn duty to make all legitimate efforts to se-

cure his conviction. I leave my impressions, under the circumstances, to be estimated by those who have incurred an equal responsibility. Had I been obliged to undertake this defense, where I should not have received that kindness that was so delicately and thoughtfully extended to me in that court, I know not what the result would have been to me personally.

“If there is any thing in this life, that is dreadful to contemplate, it is the annihilation of the fondest hopes we hug to our bosom—the destruction of the means by which we strive to attain even temporary distinction, and the laceration of the heart, by which great disappointments affecting our destiny or prospects are sure to be attended.

“The trial proceeded; Judge William Kent presided. In its progress, it would seem that the jury were influenced, insensibly, by the exercise of that kindly nature which radiated its benignity on me, and then bestowing its beams and its fructifying influence on the jurors, disposed their minds in his behalf. The judge charged, and charged in a kindly spirit; but omitting no part of the duty exacted by the law, of which he was the exponent.

“The man was not convicted of murder, but of manslaughter. I can see the jury now, in that room in the City Hall—one of the apartments now occupied by that court over which my friend Judge Daly presides. I can see in that dimly lighted chamber, the prisoner, his frame heaving with convulsive sobs, and the handkerchief in which he buried his face, saturated with the perspiration which streamed forth in his agony. I can see, as they entered, the foreman, as he delivered the verdict that restored the trembling criminal to life and hope, and the mild approving look of the judge, as that verdict was announced. Above all, I can never forget the speechless joy of my client, and the features of his poor wife, imbued with the tenderness and fervor that inspires the humblest peasants that tread the green surface of that old land—never

shall I forget her, as she fell on her knees, and with clasped hands, and in a voice choking with emotion, breathed in low tones, a prayer for the eternal preservation of the judge who presided.

“Imagination need not carry us far to afford an assurance that the prayer of that poor woman, in that moment of heartfelt supplication and blessing, is even now pleading in behalf of our friend for the enjoyment of the infinite pleasures which crown a good life.

“My poor client was sent to State prison for a long term of years. His wife almost daily presented herself in my office to learn from me what could be done to effect his deliverance by a pardon. The time at last came when Judge Kent benevolently interfered, and the man was set free.

“There came a bright, sparkling, Christmas day, and on its glorious morning, the poor couple, with joyful and grateful hearts, wended their way to St. Patrick’s Cathedral, and there, kneeling side by side, and joining in the solemn rites of that old faith made dear to me by so many sacred memories—the faith in which I live, and in which I mean to die—repeated with gratitude—with piety—with fervor, the prayer she before uttered from the depths of her pure and eloquent heart.”

Such was the deep sympathy, such the generous motives which lived and had their being in the soul of James T. Brady; who can wonder that his faults are forgiven—nay, forgotten, when such sentiments were paramount in his mind. So were the dreams of his young ambition realized, and the humble student became the great and powerful advocate. But even in the day of his greatest triumph, he retained the verdure of his early imagination and sentiment; his heart was a sanctuary filled with lofty and pure thoughts. Is this too warm a panegyric? Let his professional brethren—let his thousand clients speak, and the coloring of the painting, if painting it is, will be deepened. Well has it been said, that foibles are

not inconsistent with generous and great qualities. Fools discover that frailty is not incompatible with great men; they wonder and despise; but the discerning find that greatness is not incompatible with frailty, and they admire and indulge.

At an early period of his life, Mr. Brady attained a position at the bar which gave him a choice in the retainers which were offered him, and, therefore, he was not often the conscious advocate of wrong.

At this period he labored as patiently and ardently, as in those years when he was unknown to fame. It has been said that immediate gifts of early praise fascinate and dazzle the mind so as to indispose it for patient labor. No such mental dissipation ever weakened the intellectual frame of Mr. Brady, though from a very early period he was accustomed to applause.

Among the important criminal cases in which he was engaged, was that of Huntington. The defendant was a young man of the highest respectability,—of great wealth—ardent and active in his nature; he participated in the wild speculations of Wall-street, unrestrained by caution and without the balance of moderation, or the interposition of caution, until visions of vast accumulations floated before his eyes, causing him to yield his entire faculties to the possessory desire, producing one of those instances of a disordered action of the principle of acquisitiveness described by Gall, Spurzheim, Guy, Rush, and others.

Under these circumstances, Mr. Brady interposed the plea of moral insanity—that plea which insists that persons who are the subjects of natural, or congenital moral derangement, are not morally accountable; as in the case of a female servant described by Ray, who could not help stealing secretly from her master, though she was intelligent, modest, and religious, and was all the time conscious of, and admitted the turpitude of her actions. She was placed in a hospital, as insane, and, after apparent restora-



tion and a long trial, again taken into service. Gradually, in spite of herself, the instinct again mastered her; and in the midst of incessant struggle between her vicious propensity on the one hand, and a conscientious horror of her condition on the other, she was suddenly attacked with mania and died in one of its paroxysms. And also the case related by Dr. Rush, in his Medical Inquiries, of a woman who was entirely exemplary in her conduct, except in one particular. "She could not refrain from *stealing*. What rendered this vice more remarkable was, that she was in easy circumstances and not addicted to extravagance in anything. Such was the propensity to this vice, that when she could lay her hands on nothing more valuable, she would often, at the table of a friend, fill her pockets secretly with bread. She both confessed and lamented her crime."

Mr. Brady contended that Huntington committed his crime under the influence of this species of insanity. If it was not the most successful, it certainly was one of the most brilliant defenses ever made at the New York bar. He exhibited a knowledge of psychology, or the science of the phenomena of the mind, truly wonderful. In his examination of the medical and scientific witnesses, a stranger might easily have mistaken him for one of the learned professors present, who, for the time being, had adopted the office of interrogator. Like Governor Seward, who interposed the plea of moral insanity in the great case of the People *v.* Wyatt, he often puzzled the wise, learned, and scientific men who appeared against his client, and which exhibited the depth and extent of his research.

But the plea of insanity is unpopular, it rests on so many subtleties—has so often been the subterfuge of the most hardened criminals, that it is difficult to make it available; and as has been well said by Professor Upham, "Many individuals, through a misunderstanding of moral insanity, have suffered under the hands of the executioner, who, on principles of re-



ligion and strict justice, should have been encircled only in the arms of compassion, long suffering, and charity.”

Huntington was convicted and sentenced to State prison for a long term of years.

“Mr. Brady also defended McDonald, of Mobile, for killing Virginia Stewart, in Broadway; Jefferds, charged with the murder of Walton; Madame Restell, charged with producing an abortion—in the latter case, he was assisted by the late David Graham; the trial of Baker, for killing Poole; in this, the jury disagreed three times. At length, Mr. Brady, after a long contested motion, changed the venue from New York to Newburg, on the ground that in New York, public sentiment was so much against his client, as to preclude the possibility of his having a fair and impartial adjudication of the charge alleged against him. After the disagreement of the Newburg jury, the eminent and untiring counsel had the satisfaction of seeing Baker discharged on his own recognizance, a matter tantamount to an acquittal of the charge on which he was indicted.

“In the Kane arson case, there were two disagreements of the jury, and a final discharge of the prisoner; Jefferds, whom Mr. Brady defended, was acquitted of the murder of Walton; but subsequently, when tried for the killing of Mathews, he was convicted and sent to State prison.

“In the celebrated Gardner-Tyler will case, he won the suit for his client (Gardner), against the weight of evidence, notwithstanding the client of the opposing counsel was a lady, whose interests were defended by those eminent lawyers, Attorney-General Evarts and Edwards Pierrepont, Esq. It was on the very ground that the verdict of the jury was against the weight of evidence, that the court subsequently granted a new trial.

“Mr. Brady was one of the counsel in the celebrated Parish Will Case—a case so important that over

eighty days were spent in taking testimony. It occupied the attention of our State courts for long time ; while many of the ablest lawyers of the city of New York were engaged in it. Messrs. Evarts and Cutting appeared for Mrs. Parish, and John W. Edmonds for the sisters, while O'Connor & Jordan were counsel for the brothers. The latter, however retired from the case, and Mr. Brady was retained in his place ; and with Mr. O'Connor, conducted the argument for the brothers in the Surrogate's Court. The case was contested with unusual ability and learning through all the State courts, and was finally terminated in the Court of Appeals. A perusal of this singular case will be of great advantage to the legal student.

“He was engaged also as counsel for the respondents, in the argument before the Court of Appeals, some years ago, when the question of the constitutionality of the Metropolitan Police law was before that tribunal. This question was finally decided against him, and in affirmation of the new law.

“Nicholas Hill once declared that Mr. Brady's arguments gave him more trouble and annoyance, and caused him to study his cases more searchingly and closely than did those of any other lawyer against whom he had ever been pitted.

“In the year 1848, Mr. Brady was counsel for Hon. John C. Mather, State Canal Commissioner, who had been impeached for malfeasance in office, and although some of the ablest legal minds conducted the prosecution on the part of the State, he succeeded in acquitting his client. Mr. Brady will be remembered also as one of the counsel in the lengthy Erie Railroad litigation of last year. It was in an argument in one of the many suits growing out of that litigation, that he launched forth such eloquent and powerful invectives against a certain Supreme Court judge, and a referee before whom some of the suits were brought for investigation. The matter was much talked of at the time.

“The eminent advocate did not take every case that was offered him. He seemed to desire only those into which he could throw his whole soul and all the energy of his nature, and many were declined by him—sometimes because he did not choose to undergo the severe mental strain that conducting them would necessarily involve, and at others, because by undertaking them, he would become more or less involved in partisan issues. He was solicited to conduct the defense of John H. Surratt, for alleged complicity in the assassination of President Lincoln, but declined the offer. Both sides tried to retain him in the Fullerton case of recent date, the government offering him a fee of ten thousand dollars, but he refused to participate in it on either side. Mr. Brady entertained the very highest sense of professional honor. In illustration of this, it may be mentioned that after the election of his brother, Hon. John R. Brady, to a seat on the Common Pleas bench, he never would, under any consideration whatever, engage in any litigation before that court, although great pecuniary inducements were frequently held out to him to do so.”

These were but a small number of the cases in which Mr. Brady was engaged; they were tried during the last fifteen years of his life, while very many cases, which occupied the attention of the public at the time of their trial have not been referred to. It is said that of all the persons whom he defended for capital offenses, only one suffered the extreme penalty of the law.

The last great criminal case in which he was engaged, was that of the *People v. Cole*, for killing Hiscock, a member of the late constitutional convention. That case is still fresh in the recollection of the public. It was, in some respects, like the case of Sickles, which virtually settled the doctrine that the aggrieved husband may lawfully kill, even though sufficient time has elapsed for passion to subside, after the discovery of the offense, or on the discovery of such

circumstances as render the commission of the crime morally certain.

The Cole-Hiscock case went a step further, and absolved the husband for slaying the supposed seducer of his wife, on her confession alone; while the principle established in the McFarland case went still further.

There are many serious considerations connected with this subject—considerations which admonish society that amid all the perfections of our laws, there is one point in which we have returned to that primitive state, where individuals take the law into their own hands,—redress their own wrongs, “with a red right hand,” taking life on the busy street, in the crowded hotel, or wherever the avenger meets his victim. It is apparent that we are approaching a period when this practice must end, else other great offenses will be punished with impunity in the same bloody manner, “for there is already a frightful amount of mob spirit, even among intelligent, reasonable citizens.”

Mr. Brady entered on the defense of General Cole, suffering under an indisposition which had existed for some time; but deeply sympathizing with his client, he forgot all personal disability, and with his eminent and learned colleagues made a successful and brilliant defense.

In this trial his mental and physical labors were so intense, that they accelerated the ravages of the disease which was preying upon him, and hastened his death.

But the great intellectual effort of Mr. Brady's professional career—the one that best exemplified his powers as a jurist, and the amplitude of his mind, was his argument made in the Forrest divorce case in the Court of Appeals. That case was first tried in the New York Superior Court in 1851, before Chief Justice Oakley. It was brought by Mrs. Forrest against her husband for a divorce on the ground of adultery;



for weeks it was stubbornly contested, inch by inch ; attracting more interest than any civil suit which was ever before tried in the city.

Charles O'Connor conducted the case for Mrs. Forrest, and John Van Buren appeared as the champion for the great actor. There entered into the contest, all the unhappy dissensions which render the life of the parties "an age of years all winters." Criminations and recriminations gave the case a dramatic interest. But at length Mrs. Forrest succeeded against a turbulent and powerful defense. For Mr. O'Connor, it was a triumph seldom attained at the bar—for Mr. Van Buren, the misfortune of the defeat was obscured by the lustre of his brilliant defense, and the exhibition of those talents which rendered him a great and commanding lawyer. The case at last was appealed to the General Term, and at length reached the Court of Appeals, where Mr. Brady entered into the contest as the colleague of Mr. Van Buren ; Mr. O'Connor appeared for Mrs. Forrest. The argument took place in December, 1862, and the Court of Appeals was the scene of legal contest seldom witnessed within its bar. It could hardly be otherwise, when two such gladiators as Charles O'Connor and James T. Brady were the chief contestants. To say that the argument of the former was able and eloquent, would be like saying of the sun, that it is bright. Mr. Brady's lost nothing in comparison with it. It may be proper, however, to add, that it dissipated the opinion that he was only great in criminal cases. Mr. O'Connor again succeeded, and after fifteen years the Forest divorce case was ended.

As has already been remarked, Mr. Brady was a lover of literature. In the midst of his most engrossing career, he found time to indulge his literary taste. He submitted to the most laborious and persevering process of private study ; like De Witt Clinton, whatever he found worth reading once, with him, warranted a second perusal.



He believed that poetry, instead of being a dream of fairy land, was imbued with real life; that the themes of the poet were often the strongest verities, that he moralized in his exquisite imagery, and reasoned in song.

It is true that Shakespeare, Jeremy Taylor, Milton, Burke, and finally, the most gifted writers which the world has produced, possessed a luxuriant fancy which started forth, adorned, and beautified great philosophic truths. This is attested in the beautiful and sublime allegories of the Bible, in which a meaning, lofty and perspicuous, rises to the view; and hence, as Bishop Lowth has elegantly remarked: "The passion of jealousy, its causes, circumstances, its progress and effects, I hold to be more accurately, more copiously, more satisfactorily described in one of the dramas of Shakespeare, than in all the disputations of the schools of philosophy."

Among the table-books of Mr. Brady, were the works of Atterbury, Steele, Swift, Burke, Fenelon, Halifax, and Berkley. He drew down genius from its air-built citadel in books and libraries, and made it his playmate—his companion.

Like Talfourd, and many other great jurists and civilians of England and America, he committed his thoughts to paper, and his writings enriched the pages of several contemporary magazines and journals. His soft, copious, and harmonious style rendered him a favorite of the reading public. Nor was this all; he possessed eminent abilities as a successful lecturer, and he often appeared before the public in this character. Among the themes upon which he lectured, were "The Advocate—his Rights and Duties;" "The Law of Libel;" "The Anglo-Saxon Race;" "The Influence of Useful Inventions on Society;" "Ireland's Past and Future."

These lectures exhibited a cultivated, happy view, a shrewd and penetrating knowledge of his subject,

profound without pedantry, and elegant without extravagance.

This was his characteristic as a speaker at the bar, there he adapted himself to the strict rules of legal oratory; but even there, the richness of his intellect would occasionally flash out, and he would fasten a glittering diamond—a rich pearl of thought, on the coldest and most emotionless theme.

It has been said that gravity is the cloak of wisdom, that those who have nothing else, think it a fault to affect one without the other, because it destroys the only foundation on which their pretensions are built—that the earnest part of reason is dullness; and that the generality of the world are therefore concerned in discouraging any example of unnecessary brilliancy—that the two things do not live together. Edmund Burke did much to overthrow this idea; James T. Brady did more. He proved that gold is not the less valuable for being wrought into elegant shapes and richly embossed with curious figures; that the solidity of a building is not destroyed by adding to its beauty and ornament; that the strength of a man's understanding is not always to be estimated in proportion to his want of imagination. In his speeches and in his writings Mr. Brady showed

“How charming is divine philosophy,  
Not harsh and crabbed, as dull fools suppose,  
But musical as Apollo's lute.”

He was a lover and a patron of the legitimate drama,—not that sensational puerile drama, which runs wild after the most extravagant violation of all rules, and permits the strangest outrages on feelings and taste,—which brings the stage down from the world's epitome to the sphere which “no divine philosophy illumines.”

His acquaintance with the writings of great dramatists was extensive. He read critically Æschylus, Sophocles, and Euripides, the three Greek dramatic

writers whom the Alexandrine critics regarded as the foundation of the Greek literature. He particularly admired the former, for the power in which he painted the passions; terror was his element, and in that he succeeded beyond any other writer, ancient or modern.

Mr. Brady, in writing to a friend on this subject, some years ago, said, "Perhaps no author blended the passions of pity and terror with more force and originality than Shakespeare—pity, not only for youth, innocence, nobility of character, and virtue, as in Imogene, Desdemona, Brutus, Coriolanus,—or for insignificant persons, like the Duke of Clarence, or profligate and worthless ones like Cardinal Wolsey,—terror in all its forms, from the madness of Lear, and the ghost of Hamlet, up to the dreams of Richard, and Lady Macbeth. But perhaps the most miraculous of all his representations are those in which he has portrayed the wanderings of a disordered intellect, and especially that species of distraction which arises from the excess of sorrow."

Mr. Brady was for many years president of the American Dramatic Fund Association, with the original formation of which he was connected. There are many instances of his liberality towards this institution, which will not soon be forgotten.

He was no politician, at least, not in the common acceptation of the term. It may well be presumed, that had he attempted the career of a party politician, he would have failed, so far as his own aggrandizement is concerned. His taste turned him against the bartering, bargaining politicians of his day.

On the accession of President Johnson to the chief magistracy, he was offered the position of attorney-general in the president's cabinet; he was urged by many of his friends to accept it, but he peremptorily declined, remarking that if there was anything for which he entertained a holy horror, it was compulsory association with Washington politicians.

He was frequently urged to become a candidate for Congress, but he invariably declined, with that courtesy which governed him in every sphere of action. He was never voted for by the people, but twice—once in 1850, when he was the candidate of the Hardshell Democracy for attorney-general, against Judge Grover, Softshell, or the Freesoil section of that party. Mr. Brady's vote in the State was exceedingly flattering, but Ogden Hoffman, the nominee of the Whig party, was elected. The second time Mr. Brady was voted for, was in 1860, when he became the candidate of the Breckinridge and Lane portion of the Democracy, for the office of governor of the State of New York.

“He was always identified with the Democratic party, and in his youth, during the times of Jackson and Van Buren, he was an active partisan. Although a conscientious adherent to the principles of the Democracy, and a staunch opponent of the Republican party, when the late war broke out, he snapped asunder all political ties that bound him to party policy, and came out boldly against the southern leaders. Few persons did more than he to arouse the patriotism of the people in urging on a complete crushing out of the spirit that animated the insurrection against the federal government. During the terrible riots of 1863, he also took advanced ground in favor of supporting the draft law, and denounced with all the energy of his nature, the attempts that were made to prevent its execution. The only occasion on which he ever acted officially for the federal government was in 1867, when he was sent to New Orleans, as joint commissioner with General ‘Baldy’ Smith, to investigate the irregularities that were alleged to have been committed in the Department of the Gulf. He drew up a report of the investigations of the commission, which is now in the archives of the war department. It is said to reflect very severely against many officers who were stationed in New Orleans and at other posts in the De-



partment of the Gulf; but for some reason it never was made public. He was, many years ago, after yielding to the extreme solicitation of the authorities, appointed to fill a vacancy occurring in the office of district-attorney of the city and county of New York, but held the position only a few months." Though in his maturer years, as we have seen, he was not an active politician, yet in the days of his allegiance to the Democratic party, he often addressed political gatherings, and often wielded his pen in defense of his political principles. But neither his speeches nor his writings were confined to the narrow and transitory politics of the day; he delighted to turn the mind from temporary and personal views, to the great principles upon which every decision of reason must ultimately rest; and without the frequent contemplation of which, as Bishop Berkley says, "A man may, indeed, be a thriving earth worm, but he will prove a sorry patriot." Mistakes as to facts—the illusions of political prejudice, or the operation of those passions inseparable from human frailty, may sometimes have led him to erroneous conclusions. In his speeches and in his writings, he was always acute in the perception of principles, and in grasping the question under consideration—luminous in their exposition, and ingenious in their defense.

His faults as a speaker or writer were a tendency to verbosity, and the too frequent use of expletives. On popular themes, he sometimes sought too many decorations of fancy, which led to redundancy; but these faults were not of frequent occurrence; usually, there was that *naivete* and simplicity in his style and manner, which never failed to interest the reader or hearer.

He never arose to address the court, the jury, or the general assemblage, without at once commanding the respect and attention of all in his presence. His manner was animated and pleasing; the interest which he excited soon obscured all his errors. He had a happy talent of adjusting his manner as well as his



discourse to the capacity of his hearers, and the object regarding which he spoke. In the language of an eminent legal writer, "He was always fit for the occasion sudden." This is illustrated by the following incident, related by Luther R. Marsh, Esq.

"I had a case some years ago of such importance to property and character, that I deemed it advisable to call in Mr. Brady to share the responsibility. But so crowded and imperative were his engagements, that I found it impracticable to meet him in consultation—all our appointments fell through. Nevertheless, I sent him notice of the time the court had assigned for the argument, and he was promptly there; though wholly uninformed of the facts or position of the case, I was glad for the magnetism of his presence, though anticipating but little actual support from his reply. Purposely opening very fully—more for him than the court—I observed him rapidly taking notes; and when I had concluded, he attached and folded his sheets and handed them to me. I found on perusing them, that he had grasped the whole case—comprehending every question involved in it, adding additional points of great weight and importance, which he had prepared on the occasion. Then, after the opposing argument, followed his reply—so complete, so well arranged, so powerful, that it would have been remarkable under any state of preparation, but most extraordinary as a spontaneous production."

One of the great characteristics of Mr. Brady, was his independence of character, professional as well as private. Professionally, he cared nothing for weighty influence or powerful names. He believed the intellect was too mighty to be subservient to money, or influenced by popular tumult. Hence, as we have seen, when the incidents which led to the late war were occurring, he did not hesitate to unite himself, heart and hand, with those who were engaged in suppressing the rebellion. And yet, to use the language of Mr. O'Connor, "Perhaps, the two most remarkable

circumstances connected with his professional career, were such as to excite among superficial observers, a doubt of his earnestness. When the crew of the Confederate privateer *Savannah* were placed upon trial in the city of New York, for piracy, James T. Brady, unrewarded, so far as I know, appeared as the leading champion of the defense—demanding an acquittal. When the struggle had passed—when the mighty conflict was over, a somewhat similar drama was announced. The chief of that great Confederacy was summoned to a similar ordeal; and at once, under the influence of similar sentiments, Mr. Brady appeared as his defender. For this unpopular and arduous office, he also declined remuneration, though ample compensation was tendered. In these acts, you see evinced the self-relying determination and independence of the man's character—his firm and discriminating judgment. His feelings, his prepossessions, his interests, all that could engage the heart of man, placed him upon the side of the North. Could he have so directed the enginery of the war, its stroke would have been fatal to every armed foe throughout the South. But he had a cool, dispassionate judgment, knowledge of the law, and a sense of decorum; and these led him to certain definite conclusions. He thought that courts, juries, and the gallows, were unfit weapons of war; he deemed them most unfitting accompaniments of the peace which arms had won."

Mr. Brady's situation in defending the *Savannah* privateers and Mr. Davis, was similar to that of the elder Adams in defending the British officers and soldiers, engaged in the Boston massacre, in 1770. At that time Mr. Adams was one of the leading patriots, greatly beloved and esteemed for his patriotic exertions and his intrepidity in opposing British aggression, and yet, "at the risk of losing the favor and esteem of the people, he appeared as the advocate of the accused, having for his colleague Josiah Quincy, an-

other leading patriot, whose eloquence had often been heard at the assemblies of the Sons of Liberty."

Few men had a more extensive circle of cherished friends than Mr. Brady. His manners were courteous and kindness was innate in his nature. "With the younger members of the bar he was an especial favorite, always ready to aid them by his counsel and advice. In the social circle he was a genial companion; he had an abundance of anecdote, and was prompt at wit and repartee. For the land of his ancestry, he entertained a love hardly less than that which he invariably avowed for his native soil, and some of his finest touches of eloquence are known in connection with his address on Irish national subjects."

The disease which has been spoken of in connection with the Cole-Hiscock trial, continued to prey upon him, though its symptoms were not sufficiently dangerous to admonish him of his approaching dissolution. His last public speech was delivered on the 14th day of January, 1869, at the banquet given to that distinguished lawyer, James W. Gerard, on his retiring from the bar. In that assemblage of great and gifted lawyers, Mr. Brady appeared, meeting there, for the last time, those professional brethren, endeared to him by long association.

The scene was unrivaled for luminous eloquence, bright thoughts, original imagery and for a flow of high toned and generous sentiment. There the intellect, imagination, and thought of Brady shone out with peculiar brilliancy—in a sort of unconscious power—in a kind of intuitive perception of the analogy of things. His theme was "Our Fraternal Union"—a subject peculiarly adapted to his talents and to the occasion; some portions of it breathed a pathos which touched all hearts, and aroused emotions which cannot be forgotten by those who listened to him.

After this banquet, Mr. Brady continued his professional duties, nearly to the day of his death. He died on Tuesday, the 9th day of February, 1869.

On the Friday previous, he was engaged in the Supreme Court during the forenoon ; at one o'clock he argued a motion in the Superior Court, and during the remainder of the day, he was engaged in the trial of a cause before a referee. On the Sunday following he was stricken down, and rendered speechless by paralysis ; he lingered until Tuesday following, when he expired.

His death created a profound sensation throughout the country. The bench and the bar attested their respect for his memory, by proceedings characterized by the deepest solemnity and sorrow. Nearly all the eminent members of the New York city bar assembled on a call, to attest their grief at the sudden death of their distinguished professional brother. Every degree of talent, of eloquence, and imagination, laid upon his tomb bright and fragrant garlands. "Youth, middle age,—his equals and his peers—the ablest and most respected of his contemporaries, descanted in decent, modest, and becoming language upon his merits."

The popular favor which he enjoyed in such unmeasured profusion, was indicated by a little circumstance which occurred after his decease. A poor Irish woman, to whom he was known, when she learned of his death, out of her scanty earnings purchased a camellia, brought it to the door of his residence, and with tears in her eyes, requested that it might be laid upon his coffin.

The wealthy in their pride and strength, the gifted—the eloquent—the renowned, and the poor in their poverty, offered incense to his memory.

The personal appearance of Mr. Brady was attractive and pleasing. He was slightly above the middle size, erect and well proportioned. His face was one which left a permanent impression upon the mind of the beholder ; it had all the distinguishing expressions of intellect and the sovereignty of mind. His brow was superb ; his forehead broad and high ; his hair

dark, thick, and curling, revealed his expansive forehead, except where a single lock fell over it. His eye and mouth indicated benevolence, refinement, and reflection; finally, the classic contour of his features would attract the admiration of the gifted artist, who, while he admired, could not imitate.

Mr. Brady never married. His home was with sisters, to whom he was deeply and tenderly attached; such were his domestic enjoyments with them, that "he seemed unwilling, by forming a matrimonial alliance, to loosen the tie which bound him to his fraternal relations."



## SAMUEL G. HATHAWAY.

His Love of the Legal Profession and Literature.—A Patron of Indigent Literary Men.—Incident Connected with an Eminent Poet.—The Loan.—The Singular but Generous Payment.—His Birth.—A Son of General S. G. Hathaway.—Character of his Father.—The Pioneers.—Their Memory.—Political Incidents in the Life of General Hathaway.—Is Present at the Attempted Assassination of General Jackson.—Scene.—Young Hathaway Enters Union College.—During Vacation, Visits a Friend Engaged in Teaching.—Dullness of the School Room to the Visitor.—Effort of the Teacher to Amuse his Friend.—Laughable Scene in the School Room.—A Whipping in Advance.—Hathaway Graduates and Commences the Study of Law at Cortland, New York.—Completes his Studies with Judge Gray, at Elmira.—Admitted to the Bar, and Commences Practice with his Preceptor.—Election of Judge Gray to the Bench of the Supreme Court.—Hathaway forms new Professional Relations.—His Politics.—Is Elected to the Legislature of 1842-43.—His Legislative Career.—Azariah C. Flagg.—George P. Barker.—Horatio Seymour.—Michael Hoffman.—Edwin Crosswell.—Samuel Beardsley.—Speeches of Mr. Hathaway.—His Reply to Colonel Young.—Stop Policy.—Governor Bouck.—Hathaway Retires from the Legislature.—Refuses ■ Renomination, but Afterwards Active in Politics.—The Democratic War Horse of the Southern Tier.—Engages Actively in his Profession.—Character as a Lawyer.—Amusing Scene with a Judge.—Hathaway and the Doctor.—Personal Appearance.—Enters the Army as Colonel of the One Hundred and Forty-first Regiment.—Attachment of his Officers to Him.—Ill Health.—Compelled to Resign.—Continued Sickness.—Scene of his Death.—General Characteristics.

No man was ever more ardently attached to his profession than Samuel G. Hathaway; he regarded it as “the great avenue to political influence and reputation, whose honors are among the most splendid that can be attained in a free State, and whose emoluments and privileges are exhibited as a prize to be contested freely by all its members.” He believed the science of law to be “the perfection of all human reason.” As a student, he reduced the study of it to those methodical rules which are adopted in the acquisition of any science; still he did not sacrifice to his profession

the general improvement of his intellect and heart. Never was there a more unconfined mind than his, and it may be cited as a practical example of the benefits of that general culture of the intellect which forms one distinction of our times; but which some dread as unfriendly to original thought; but as has been well said, the mind is diffusive, and accordingly, its natural progress is from one to another field of thought; and that wherever original power, or creative genius exists, far from being distracted or oppressed by the variety of its acquisitions, it will see more and more common bearings—more hidden and beautiful analogies in all the objects of knowledge—will see mutual light shed from truth to truth, in whatever topic it would unfold. This was well understood by Mr. Hathaway, and this rendered his mind singularly harmonious—a well-adjusted whole.

He was accustomed from his youth to drink from the fountains of classical literature, but he possessed no pedantry or undue fastidiousness. In the midst of his most trying professional labors, he often surrendered himself to the enchantment of literary reading—of Oriental fiction—of the strange and beautiful creations of “Araby the blest.”

An ample fortune gave him every opportunity for the cultivation and enjoyment of his taste.

To indigent literary men, his hand was ever open. The following circumstance is only one of the many that characterized his intercourse with them. Several years before his death, a distinguished poet of our own State, who still lives and is known to fame, but who, like many that court the Muses and linger around Parnassus, was then poor; happened to be in the city of New York, much in need of means to extricate himself from embarrassment. While deeply studying how and in what manner to obtain pecuniary relief, he happened to meet Mr. Hathaway, with whom he was acquainted, coming out of the Supreme Court room in the City Hall.

“ Ah, Colonel, how do you do? I am very glad to see you,” said the poet, shaking hands with the former.

“ I am very happy to meet you, and how is it with you and the republic of letters?” said the colonel.

“ You know, Colonel Hathaway, that all republics are ungrateful, but the republic of letters is especially so, and I am just now a victim of the latter,” said he of the Muses.

“ I am sorry to hear this; it cannot be that the *vox populi* demand your oppression,” replied Mr. H.

“ Oh, no,” said our friend, “ it is only this, I am sorely oppressed for the want of a sum of money, and as I always give my particular friends the preference on such occasions, I desire that you will loan me the amount I need.”

Mr. Hathaway learned that the sum he desired was one hundred and fifty dollars. As soon as it could be counted, the poet was rejoicing in the possession of the money. With many thanks, and promises of an early payment, he hastened from his benefactor to his importunate creditors.

Time passed on, a year rolled away, and in the multiplicity of business, the event had nearly passed from the memory of Mr. Hathaway, when one day he received by express, a box of considerable size, quite heavy, and apparently well filled. Upon removing the cover, he saw that it contained a large number of neatly bound books, which, upon examination, proved to be the recently published works of the poet to whom he had loaned the money in New York. Taking the books from the box, he discovered, neatly written on the inside of it, the following couplet:

“ Bards are birds of various prey,  
Ye gods, why pounce on Hathaway?”

It was enough; the lender was generously paid, and, as he afterwards said, the books more than paid

the principal, and the poetry paid the interest compounded.

Colonel Samuel G. Hathaway was born at Free-town, in the county of Cortland, on the 18th day of January, 1810. His parents were the late Major-General Samuel G. Hathaway, and Sally Emerson, of Solon, Cortland county. The families of Hathaway and Emerson, are both of English descent; that of the former has a known genealogy, which extends far back into English history. In the long and eventful life of General Hathaway—in the various positions which he occupied—in the many posts of public duty which he filled—in the many instances which his life affords of untiring energy, and devoted patriotism, a true representative character of our Republic is developed, which impresses its own appropriate teaching on posterity; for, in the language of inspiration, “No man liveth, and no man dieth unto himself.” It was quaintly said by one of the kings of Arragon, “Dead men are our best instructors.” General Hathaway was one of those who aided in making the desert bloom. He was a pioneer of central New York.

Alas! how fast they are passing away from earth, these sons and daughters of a day of peril, toil, and hardships. Their stern virtue, their unbending integrity, their enterprise and industry, laid the foundation for the wealth, the culture, the refinement of our day. Most of them sleep beneath the soil they loved so well, and which they made almost as rich as the vale of Cashmere. Wealth and fashion have changed their good old customs, their homely, but time-honored institutions; yet on the hillside, and in the valley, their green graves are venerated spots, and their spirits seem to linger by the forest and the stream, while the murmuring breeze breathes a gentle, but not unwelcome, requiem for them. Let us fondly cherish the memory of the pioneer. “Let not ambition mock their useful toil.” Amid the events of our day their memory will come to us, like a voice

from the past, with many hallowed associations, which bind their names to every spot where they fought so well the battle of life.

“ And these—of whose abode,  
Midst her green vallies earth retains no trace,  
Save a flower springing from their burial sod,  
A shade of sadness on some kindred face  
    A dim and vacant place  
In some sweet home.”

Among such men Mr. Hathaway was a leader whom they delighted to honor; and whose interest he ever labored to advance and promote. At the organization of Cortland county, which took place in 1808, he settled at Solon, where he continued to reside until his death. In the spring of 1814, he was elected member of Assembly from Cortland county. In the spring of 1813, Daniel D. Tompkins was triumphantly re-elected governor, over Stephen Van Rensselaer, his opponent. The war with England was then raging, and such was the ardent, energetic and patriotic support which Mr. Tompkins, in his previous administration, had given President Madison in the prosecution of the war, that he became the darling of the then victorious Republicans, and “The Farmer Boy of Westchester,” as Mr. T. was then called, “was toasted at every gathering of that party.”

General Hathaway entered the Legislature the firm and unswerving friend of the president, the close, intimate and influential supporter of Governor Tompkins; and their friendly relations continued through life. In the year 1816, the General acted with Enos T. Throop, Martin Van Buren, Peter B. Porter and others, in securing the nomination and election of Mr. Tompkins to the vice-presidency of the United States. Mr. Monroe received the electoral vote for president. Mr. Hathaway was again elected to the Legislature in the year 1818. Cadwadader D.



Calden, and Ogden Edwards, of New York city; Stephen Van Rensselaer and William A. Duer, of Albany; William B. Rochester, of Steuben; Erastus Root, of Delaware, and William C. Bouck, of Schoharie, were then members of Assembly — while the Senate was composed of such names as Martin Van Buren, Abraham Van Vechten, Samuel Young, Peter R. Livingston, Moses J. Cantine, Jabez D. Hammond.

Those were days when talent, ability, probity and honor were sternly demanded of those who sought legislative and other official honors. In those days cupidity, speculation, and infamous panderings to sources of wealth, were not known by law-makers. In those days ambitious, inefficient, ignorant, bad men did not push themselves into high places. In those days men did not prate, in halls of legislation, of morality, patriotism, and even religion, in accompaniment to the ring of the dollars which had just bought their souls. Politics was not then the reeking cesspool where men fatten and grow rich on corruption—men, who yesterday were the Lazaruses whose sores were not even licked, and who to-day revel in putrid magnificence.

General Hathaway was elected a State senator from the old sixth Senatorial district in 1823, during the administration of Governor Yates. He was elected a representative in Congress from the then seventh Congressional district in the year 1832, and took his seat in 1833.

It was during the second session of this Congress that Richard Lawrence made a bold and intrepid attempt to assassinate President Jackson, “which produced great sensation at the time, and which, if the consequences had been equal to the apparent purpose, would have signalized the day by a horrible catastrophe.” The attempt was made in the portico of the capitol, at the funeral of the Honorable Warren R.

Davis, member of Congress from South Carolina, just as the president, with the secretary of the treasury, Hon. Levi Woodbury, on his left arm, was leaving the rotunda. Mr. Hathaway and General Root were a few paces in their rear, when a person stepping forward from the crowd in front of the president, within two yards and a half of him, leveled a pistol at his breast.

A loud and sharp report instantly followed, which was supposed to be the report of the pistol, but which was only the explosion of the percussion cap. The man instantly threw the weapon upon the ground, and drew another, ready cocked, from his pocket, which he presented at the heart of the president, and another loud report reverberated through the portico ; this, too, proved to be merely the explosion of the cap ; the pistol did not discharge.

All this was done so rapidly and adroitly that no one had time to interfere with the attack until all was over. In a moment a scene of indescribable terror and confusion ensued ; many believed that the president had been assassinated. The old hero himself exhibited that dauntless courage which ever characterized him in times of peril. He did not observe the assailant until after the discharge of the first cap, when his attention was directed to him by the report. The man was then in the act of presenting the second pistol. Lifting his cane, the general sprang like a lion upon his antagonist, but, before reaching him, the explosion of the cap took place. The next instant the President was near enough to strike him with his cane, exclaiming, "Leave him to me, and, by the Eternal, he will never do that thing again" ; but by this time Mr. Woodbury, Generals Root and Hathaway, had reached the assassin, and he was at once prostrated upon the floor. Upon examination, the weapons proved to be a pair of elaborately finished pistols, of the Derringer order. They

were perfect in all their parts, and carefully charged with powder and ball.

There was nothing discovered which could prevent their discharge. The next day, in presence of the secretary of the navy, and other distinguished gentlemen, they were re-capped, the charge which had been inserted by Lawrence still remaining, and, at the first attempt, they were both discharged; the balls which they contained penetrated several inches into a stick of hard timber, exhibiting at once the deadly nature of the weapons which had so mysteriously failed when presented at the heart of the president. His escape was, indeed, most wonderful, and a grateful nation saw in it the hand of Omnipotence—the shield of Him who controls the destinies of nations.

President Jackson laid his hand upon the Bank of the United States with the energy of a giant, and that powerful institution which controlled the money marts of the nation, I had almost said of the world, writhed in his grasp like the fabled Laocoon, Neptune's priest, in the folds of Minerva's monsters. Rage and bitter defiance followed the fearful contact. The nation was convulsed from center to circumference; but the genius, the power, and the irresistible determination of Jackson prevailed, and the Bank, with all its power and influence, fell conquered and helpless at his feet.

The attempt at his assassination was believed by his friends to have been planned by the friends of the Bank, and for a short time it was openly charged upon them. But, upon due examination, it was ascertained that Lawrence was hopelessly insane; having no motive whatever in his attempt upon the life of the president, except the vagaries of a mind in ruins.

After retiring from Congress, General Hathaway returned to Cortland county, and ever after declined all civil office. He was, however, until a period near his death, an acting major-general of militia in this State, having held that office for many years. He

died at Solon on the 2nd day of May, in the year 1867, in the eighty-seventh year of his age.

Colonel S. G. Hathaway prepared for college principally at the Cortland Academy. He graduated at Union College when he was twenty-one years of age. While at college, he had a much esteemed friend, who was a student at law, and who, during the winter, taught a district school to aid him in procuring means for the prosecution of his studies. During one of his college vacations, young Hathaway visited his friend, spending the afternoon in the school room. It was a dull place for the gay and active young collegian. This soon became apparent to the teacher, who exerted himself to create some interest for his friend. Classes were called for Hathaway to inspect. Lessons were rehearsed, hard words were spelled, and hard problems in arithmetic solved, but all to no purpose, the school room was the empire of dullness to the visitor. The schoolmaster found himself pushed to extremities for something to interest his friend. In this manner some time passed away, when suddenly the man of the rod called out—

“James Buck, come here!”

This command was addressed to a dirty, squint-eyed, mischievous looking boy, apparently twelve or fourteen years of age, who happened just then to be demeaning himself quite reputably. The boy obeyed, looking the very picture of injured innocence.

“Take off your coat, sir,” said the teacher, seizing a formidable looking rod which lay upon a table near by.

“O, dear, I hain’t been doing nothing, no how. Bill Jones wanted to give me a great launking doughnut just now, but I wouldn’t take it, ’cause I wanted to be good,” blubbered the urchin.

“Take off your coat, I say!” said the teacher, flourishing the whip.

“You ain’t going to lick a feller for being good, are you?” roared the boy.

“Take off your coat!” thundered the teacher.

Seeing no other alternative, he obeyed, and the master gave him a good, thorough, old-fashioned whipping, during which the boy continued to scream, “Oh, hold up, hold up! I didn’t take Bill Jones’ big dough-nut; I didn’t do nothing, no how. Oh, hold up! hold up!”

The whipping over, the boy put on his coat and resumed his seat. Hathaway, during this scene, was obliged to cram a handkerchief into his mouth, to prevent his roaring with laughter at the queer ejaculations and gyrations of the boy.

“What on earth did you whip the boy for? I didn’t see as he had done anything to deserve it,” said Hathaway to the teacher, as they were walking home after school.

“Hath,” replied the schoolmaster, “I saw that it was getting confounded dull, and I felt so sorry for you, that I didn’t know what to do. So I called up that boy and thrashed him for your especial benefit.”

“But the boy had done nothing to deserve it,” replied Hathaway.

“Never mind that; he seldom goes a half day without deserving a thrashing, and I’ll give him credit for this one the next time he deserves the gad. So he has lost nothing, and I made it interesting for you, Sam,” replied the teacher.

Subsequently, the schoolmaster became a distinguished and successful lawyer, continuing his friendly relations with Mr. Hathaway through life. It was the delight of the latter to relate this story before his friends on festive occasions, always ending by saying, “It is true, you know;” to which the latter would reply, “Yes, it is as true now as it ever was.”

Immediately after graduating, Colonel Hathaway entered the office of Hon. Jonathan L. Woods, a lawyer of high standing, residing at Cortland village. Mr. Woods represented Cortland county in the Leg-



islature of this State with much ability, in the year 1832, and during his life he retained the confidence and respect of the bar and of the people generally.

After continuing one year with Mr. Woods, Hathaway was invited by Hon. Hiram Gray, of Elmira, to enter his office as a student. The offer was accepted, and he removed from Cortland to Elmira, in August, 1833. At this period, Judge Gray had fully entered upon that field of successful and extensive professional practice that led to the high position which he has attained as a lawyer and a judge. He had once been a resident of Cortland, having for some time pursued his legal studies there. Here he first became acquainted with Mr. Hathaway, whom he regarded as a young man of uncommonly ripe understanding, and possessing many rare and engaging qualities.

Under the care and superintendence of Judge Gray, Mr. Hathaway progressed rapidly in his studies; he was a close and methodical student. The science of law opened to him a vast field of intellectual research; and he regarded it not only as a rule of action, but as a system of ethical and inductive philosophy, through which the intellect and heart are alike invigorated and enlarged; a science which is intimately connected with the great objects of thought, and the great interests of life—a theme which has summoned as its follower, all orders of mind, the scholar, the statesman, the student of nature, and the observer of life's great drama. To the casual observer, it is sometimes regarded as a system of technicalities disjointed from philosophy, from literature, and from liberal research—a system through which justice and equity is often too finely filtered to answer the great ends for which it was designed. But this is a Utopian view, founded, perhaps, on observing the career of legal martinets, instead of liberal and high-minded lawyers. In studying law, Mr. Hathaway was not satisfied with simply ac-

quiring the "familiar weapons with which lawyers war with one another." It was not his object to become expert, but profound.

He completed his legal studies with Judge Gray, and was admitted to the bar at the October term of the Supreme Court, held at Albany, in 1836. John Savage was then chief justice, and this was the last term at which that eminent and learned jurist presided. He retired from the bench in January following, spending the remainder of his days in dignified retirement, upon his estate at Salem, in the county of Washington. Mr. Hathaway, immediately after being called to the bar, formed a copartnership with Hon. James Dunn, of Elmira, who was subsequently appointed first judge of Chemung county, by Governor Wright. This relation continued but one year. After its termination, Mr. Hathaway entered into partnership with his preceptor, Judge Gray.

This firm existed until the year 1846, when the senior member was appointed one of the circuit judges of the State. Judge Gray had previously been elected to represent the then twenty-second Congressional district in Congress.

The Constitution of 1846 provided that the judges of the Supreme Court should be elected by the people. In the convention which formed this Constitution, the question of an elective judiciary was one of the great subjects for discussion. The propriety of submitting so important an office to the vicissitudes of political parties, and political interests—to the corrupting influence of partizan strife—of rendering its high and dignified functions a prize for scrambling party politicians and petty demagogues—was doubted by many liberal and reflective minds. But happily, with some exceptions, the doubts and fears which existed against an elective judiciary have proved groundless, and to-day the Empire State has a bench which loses nothing when compared with the learned and illustrious judges of the past.

Judge Gray was elected a justice of the Supreme Court at the judicial election, which took place soon after the new Constitution went into operation. His official term continued four years, at the expiration of which time he returned again to the practice of his profession, simply because he was ardently attached to it, and because he could not endure to be an idle spectator of an arena, wherein he had been so long and so successfully a contestant.

After the appointment of Judge Gray, Colonel Hathaway formed a copartnership with Hon. A. S. Diven and James L. Woods. The former had been a distinguished and successful member of the Allegany bar, which was composed of men of much more than ordinary ability and learning—of such men as William G. Angel, Martin Grover, Luther C. Peck, George Miles, Samuel S. Haight, and others. A bar within whose pale John Young, of Livingston, John B. Skinner, of Wyoming, Selden, of Rochester, Howell, Cruger, and Hawley, of Steuben, often appeared. The firm of Diven, Hathaway & Woods soon became one of the most prominent and successful legal firms in the State. It continued in successful operation fifteen years, and was dissolved by the death of Colonel Hathaway.

Colonel Hathaway represented Chemung county in the Legislature of 1842–43. In the session of 1842, the subject of State finances engrossed the attention of both branches of the Legislature to a large extent. On the part of many there was a bitter and determined hostility to the prosecution of the public works: and this winter a law was passed which suspended the public works, and imposed a direct tax, pledging a portion of the canal revenues as a sinking fund for the extinguishment of the public debt. Azariah C. Flag was then comptroller. He was an able, methodical, keen, and sagacious financier, a warm personal and political friend of Colonel Young, who was distinguished for his antagonism to internal improve-

ments. It has been said that the State was indebted to Mr. Flagg for whatever evil flowed from the famous measure known as the stop and tax policy. But Colonel Young was really the originator of that policy. On the 25th of April, 1839, as chairman of the Senate Committee on Finance, he presented to that body his celebrated report. It was able, logical, scholastic. It denounced, in the most bitter and sarcastic manner, the existing system of internal improvement. As it was generally read by all parties, it accelerated the growing hostility to the prosecution of public works, and led to the enactment of the great stop law.

“Should a quack doctor,” said Mr. Young, in his remarkable report, “propose to his patients that he would duly open their veins and feed and nourish them with their own vital fluid, they would probably ask him whether it would be more nutritious after having passed through his hands than it was at present; and whether it would be an ‘internal improvement’ to suffer the pain of reiterated venesection and pay his fees besides? But if the quack should go a step farther, and propose to apply their blood to the use of others, or to the benefit of the favored few, then the cheat would be obvious. When a State empiric, however, urges the same process upon this great community; when he proposes to fix the tourniquet of law upon the body politic, and make a deep incision into the jugular vein, causing a depletion of forty millions of its wealth, thousands of robbers known as corporators, are prompt to applaud the experiment, to hold the bowl and to adjust the bandage.”

On this financial and internal improvement question the Democratic party were divided. Colonel Young, Mr. Flagg, Mr. Barker, Michael Hoffman and others favored the stop and tax policy, while Mr. Seymour, Mr. Bouck, Mr. Croswell, Mr. Beardsley, and many other distinguished Democrats, opposed it. Of course the Whigs threw their strength where it would most distract and divide the Democratic party.



In politics, Colonel Hathaway was a Democrat. He inherited his political faith from his father. His attachment to the Democratic party might have been expressed in the strong and beautiful language of the daughter of Moab, "Thy people shall be my people, where thou diest will I die, and there will I be buried."

He possessed thought, vehemence, fire, mirth, and wit. Though the ground on which he trod was that of legislator, lawyer, and logician, "he delighted to pluck the flowers that sprang spontaneously in his path, while he trampled in disdain the far-fetched and tawdry exotic." A sharp and polished sarcasm was at his command, which, like the spear of Ithuriel, often exhausted the force of an opponent's argument, with singular facility. Yet he was dignified, gentle, conciliating, often commanding and imposing. He entered ardently, but consistently, into the consideration of the great questions before the Legislature. He took a statesmanlike and liberal view of the internal improvement and finance question, and coincided with Dickinson, Seymour, Beardsley, and Croswell.

On the 5th of February, 1842, Colonel Hathaway delivered a speech in the Assembly on the internal improvement and stop law, then pending before the Legislature, which won the highest commendation and applause from all parties. In portions of it he went far above politics and parties. He spoke of the sacred duties, and the awful responsibilities of the Legislature. He boldly rebuked legislative abuses and errors which had passed current for years. This speech was delivered with a clearness of reason, a variety of illustration, a felicity of diction, and a glowing imagery which at once stamped him a successful orator, who was master of his subject and himself; finally, it "blended instruction with delight."

"There should," said Mr. Hathaway, "be an honesty of purpose in this matter. All questions here should be absorbed in that of the general wel-



fare, and the advancement of the interest of our great State. What are politics or party compared to this great question? When, sir, it comes to be understood that politics is a game, and that those who engage in it but act a part subservient to their own aggrandisement, that they make this or that profession, not from an honest conviction, or from any intent to fulfill them, but as a means of deluding the people, and through that delusion to acquire power or wealth; when such professions are made only to be entirely forgotten, the people will lose confidence in public men; the politician, aye, sir, and the legislator, will be regarded as a mere juggler—the honest and the patriotic, as well as the cunning and the profligate—and the people will become indifferent and passive to the grossest abuse of power, on the ground that those whom they elevate, under whatever pledges, instead of reforming, will but imitate the example of those whom they have expelled.”

Such was the language and such the sentiments of Mr. Hathaway in 1842. Did not his words have a prophetic meaning? Have not the people become indifferent and passive to the grossest abuses of power? Who can deny that the symptoms of the present day indicate a deep and growing propensity to regard all matters of legislation as measures of private speculation and advancement? Rich and powerful corporations are constantly petitioning the Legislature, both State and national, for franchises, privileges and immunities, which enable them to disregard all individual rights, and at length to defy the Legislature itself.

This indifference to the great evils of which Mr. Hathaway spoke twenty-eight years ago, has been increasing down to the present time; but, however dormant and stupid the people now are, the time will come when they will awaken with terrible earnestness to the dangers that surround them.

In the fall of 1842, Colonel Hathaway again con-

sented to accept the nomination for member of Assembly ; he was triumphantly elected, and took his seat in that body in January, 1843. Mr. Bouck had been elected governor, and was inaugurated on the first day of January, 1843.

Notwithstanding the great victory of the Democratic party in the election of 1842, it was evident that a collision between the two factions of that party was inevitable. It was soon ascertained that Colonel Young, Mr. Flagg and others, of the Radical side of the party, would submit to no compromise which did not recognize their right to control all party machinery — while, on the other hand, Mr. Dickinson, Seymour, Beardsley, Croswell, and others, held a position equally uncompromising. Of course, this rendered the position of Mr. Bouck one of great difficulty and embarrassment. The governor was not a great man ; his chief distinction was not talent, although he had fine powers of intellect, a capacity of attention, a thorough knowledge of men and their relations. He could easily understand their preferences and prejudices, a faculty which, in usefulness if not in splendor, often surpasses genius. His primary characteristic, however, and that which gave him peculiar weight and influence, was the force of moral principle — a force which, with him, operated with the steadiness of a law of nature, and which suffered no portion of his life to be wasted. He was a self-made man, a true representative of American institutions and privileges. He early learned to appreciate and value the talents and ability of Mr. Hathaway. Upon national politics, and upon some questions of State policy, the Democrats were united. Mr. Davis, of Troy, was elected Speaker. His election was, in some sense, the result of a compromise between the factions. As a tribute of respect to Mr. Hathaway, he was made chairman of the Judiciary Committee, a position which his talents eminently qualified him to occupy.

During the winter of 1843, Colonel Hathaway in-

troduced a bill into the Legislature modifying the stop law of 1842. This bill provided for the completion of the unfinished public works in the State. An immense sum of money had already been expended upon these works, and at this time they were in various degrees of progress; some of them were nearly completed. The bill was drawn with great care and prudence, and united every element of conciliation. It was strongly supported by many of the ablest Democrats in the House. Mr. Hathaway, in a speech delivered in favor of it, clearly, ably and liberally reviewed the whole question of the stop policy, and internal improvements. His allusion to the report of Colonel Young on this subject, was exceedingly happy.

“The author of that report,” said Mr. Hathaway, “is a fierce dogmatist, armed with a splendid intellect, a bold, gigantic pen, a beautiful sophistry, over which the pinching and narrow policy of the miser presides. He is the Saul of Tarsus of the times, exceedingly mad at the great improvements of the day, and breathing out vengeance against them. He should, however, study the signs of the times, and wait the descending inspiration of coming events. It is unfortunate for the country that he has so many adherents in this House, who are wasting their voices like Baal’s prophets, in crying to dumb elements, or sleeping Pantheistic gods, while others are going about like well-meaning but over-slept watchmen calling the hours of midnight, while the morning is paling their lanterns.”

He successfully demonstrated that the damages resulting from this suspension would equal, if it did not exceed, the cost of completing the public works. But such was the prejudice of the majority against their prosecution or completion, that Mr. Hathaway’s bill was defeated. The position taken by him and his friends on this question, however, has been fully sustained by subsequent events.

The legislation of that day, on the subject of internal improvements, was governed by the same narrow policy which always springs into existence in the light of improvement and advancement. It was like the ceremony of Galileo's abjuration of his "system of the world;" "when that master spirit of his age—that high priest of the stars—that representative of science—that hoary sage, whose career of glory was near its consummation—was compelled to bow before ignorance and prejudice—before a mistaken respect for errors which had become venerable from their antiquity—before the assembled cardinals of Rome—pledging himself that he would never again teach the doctrine of the world's motion and the sun's stability." But although he was driven back from his splendid theory, in shuddering admiration, yet its truths have become immortal.

Thus, the question of internal improvement has passed into manifestations of success, from progress to progress, until distance between the Atlantic and Pacific is annihilated, and through a continent the two oceans hear each other's voices. But all improvement is a victory won by struggle. It is especially true that those great periods from which we date the most rapid movements of the human mind have been signalized by conflict. Men of natural softness and timidity of character stand appalled before the energies of great and progressive minds.

Mr. Hathaway was no exaggerator, no enthusiast; he had the capacity of distinguishing what tended to the public good, and he possessed the courage to sustain his conviction of the right, even at the expense of an ephemeral popularity. Hence, as a legislator he considered himself as the servant of his constituents, whose duty it was to advance and promote their interest. After retiring from the Legislature in 1843, Colonel Hathaway declined another nomination, and applied himself to the practice of his profession. While discharging his legislative duties he became connected



with certain speculations, which subsequently resulted very favorably for him, and which, with the large income he derived from his profession, soon placed him in affluent circumstances.

After leaving the Assembly Mr. Hathaway never held any political office, except that of supervisor in the city of Elmira; yet he was regarded as a prominent leader of the Democratic party in the State, and he was often termed "the Democratic War-horse of the Southern Tier." In the fall of 1856 he received the nomination for Congress in his district. Honorable J. M. Parker, of Oswego, was the opposing candidate. But as the Democracy in the district was hopelessly in the minority, he was of course defeated. He was again nominated in 1862, while in command of his regiment in Virginia. This nomination was made without his knowledge or consent. He was opposed by Colonel R. B. Van Valkenburg, the Republican candidate, who was elected. Absent as he was, and unable to give the canvass the least attention, still he was strongly supported, receiving a vote which was highly complimentary and flattering to him. The love and devotion of his political friends were cheering and grateful to his heart, were acknowledged all his life, and were recognized even to the day of his death.

For many years Colonel Hathaway was principally engaged in the various courts in which he practiced. He was a powerful and successful advocate, and possessed the real powers of a legal orator. He was often irresistible before a jury. Frequently, when a cause seemed hopelessly lost, he would, by a sudden thought—a skillful change of procedure—turn defeat into victory. Hence his greatest strength as a lawyer was before a jury; and yet he could successfully conduct a close legal argument. He could be successful in those cases where the law is illumined by nothing save the beauty of logic, the power of reason and the force of analysis. "He could detect the sophistries, dissipate the obscurities, obviate the doubts and disen-



tangle the subtleties in which zealous ingenuity involved a case. In the trial or argument of a cause he always controlled his temper. But meanness, treachery or fraud, touched by his sarcasm, started into their naked deformity. Often affectation and hypocrisy would writhe under the lash of his irony."

But usually, his arguments were conducted with a direct and sober earnestness, and so framed as to convince rather than amuse. Though frequently persistent and importunate, in urging his points before a court, yet his courtesy and ready wit protected him from anything like arrogance or impudence. It is related of him, that upon one occasion, while engaged in the trial of an important case, before a distinguished judge with whom he had always been on terms of great intimacy, he offered certain evidence, to which the counsel opposed objected. The judge sustained the objection, ruling that the evidence was inadmissible. But Hathaway was not thus easily to be disposed of, and he made a desperate struggle to give the evidence to the jury.

"Will your honor allow me to state another reason why I deem the evidence proper?" said he.

"Certainly," said the judge, and the reason was given with great ingenuity and force.

"Still I think the testimony should not be received, even in that view of the case," said the judge, stating the grounds upon which he founded his opinion.

"But perhaps there is another view of the case, which if your honor will allow me to suggest it, may obviate the difficulty in your honor's mind," said the colonel.

"I will hear you," said the judge, "although it is clear to my mind, that the testimony cannot be received in any point of view."

Hathaway presented a new theory as to the admissibility of the evidence, explaining his position at some length. But the judge was inflexible, and ordered the counsel to proceed with the cause.

“I am so confident that this evidence should be received,” said the persisting counsel, “that I wish to be heard further.”

The patience of the judge was now exhausted.

“Colonel Hathaway,” said he, quite sharply; “what do you think I am sitting here for?”

“Now your honor has got me,” said the colonel, with one of his peculiar smiles.

The infinite good humor and piquancy of this reply, set the bar, spectators, and jury in a roar of laughter, in which it was difficult for the judge himself, who loved a joke, to refrain from joining. With great gravity and dignity, however, he ordered the counsel to proceed with the cause.

Mr. Hathaway disliked all pretension, conceit, and pedantry; he had a particular hatred for all far-fetched phraseology. He was engaged in trying a case of malpractice, when a very pretentious M. D. was introduced as a witness against his client. While giving his testimony, the doctor removed his glasses, and assuming a very pompous manner, said:

“Mr. Hathaway, I see, sir, that you do not understand the agglutination in cases of chronic peritonitis.”

The counsel made no reply at the time; but in the course of his remarks to the jury, he said:

“Gentlemen, Doctor S—— has very frankly informed me that I am entirely ignorant of what he calls, ‘agglutination in a case of chronic peritonitis.’ I really think the doctor is in the same condition himself. He reminds me of another learned member of his profession, who, more frank than our doctor here, said to a lawyer one day: ‘Esquire, I cannot comprehend what you meant yesterday, when you talked about *docking an entail*.’”

“My dear doctor,” replied the lawyer, “I don’t wonder at that. I will explain the meaning; it is, doctor, doing what you never can do—*it is effecting a recovery*.”

It is said by De Tocqueville, in his *Democracy in America*, "That the special information which lawyers receive from their studies, insures them a separate station in society, and that they constitute a sort of privileged body, in the scale of intelligence. This notion of their superiority constantly recurs to them in the practice of their profession. They are the masters of a science, which is necessary, but which is not generally understood. They serve as arbiters between the citizens, and the habit of directing the blind passions of the parties in litigation, inspires them with a certain contempt for the multitude." Although this is the opinion which one of the ablest and most distinguished French advocates and writers conceived of the American bar, yet it must be taken with many exceptions. The class of lawyers which came under his observation while in the United States, might justify this statement. But that class who are justly regarded as the ornaments of our bar, and of which Hathaway was a representative, are so nearly allied to the people, that they cannot arrogate to themselves any such superiority as is conceded to them by De Tocqueville. It is a distinguishing feature of the American lawyers, that they unite with their fellow citizens, in all that advances and promotes the progress of society; believing that to be distinguished and great, they must serve, instead of ruling their fellow citizens.

In person Colonel Hathaway was above the middle size. His form was well proportioned, erect and manly. In contests of the forum, in the excitement of debate, there was a lustre in his eye, an eloquence in his look, a dignity in his manner, which riveted attention. His voice was flexible, under good management, and easily accommodated to the sentiment he was desirous of expressing. In hours of relaxation from business, he was characterized by benignity and mildness; no one who ever met him in a friendly circle, can easily forget the attraction of his

manner and conversation. He carried into society a cheerfulness and sunshine of soul, that rendered him a pleasing associate, a companion of inestimable value. Possessing an inexhaustible fund of anecdotes, and an inimitable manner of relation, he never failed to delight and interest when telling them.

In the summer of 1862, Mr. Hathaway entered the service of the United States as colonel of the 141st Regiment N. Y. S. V. In the language of one of his eulogists, "It was urged upon him, that in the depleted state of this and adjacent counties, the regiment could not be filled without the imprimatur of his name. He gave it, and after having received his commission, and publicly announced his intention to go to the field, eighteen companies sprang into being, as if by magic, each one striving to be one of the ten who should march to battle under the colors of Colonel Hathaway."

On the 15th of September, 1862, his regiment left Elmira and moved to the front. As soon as he decided to enter the service he directed all the energies of his mind and talents towards perfecting himself in military knowledge and discipline. Having, however, served some time as an officer under his father, he was not without military experience. By the time his regiment was ready to move, few persons in the volunteer service were more thoroughly qualified for the field than he, evincing, that like many members of the bar, who have left the forum for the field, he could entwine the laurels of Justinian with those of the soldier. As an evidence of his military capacity he was soon placed in command of the Second Brigade of Abercrombie's Division, as acting brigadier-general; a position which he filled with great credit to himself and satisfaction to those under his command. With him the common soldier was as much the object of his solicitude and care as he upon whose shoulders glittered the badge of superiority and command. "Himself as sensitive as a

woman, he invariably extended to others the same high-toned treatment which he demanded for himself." Such characteristics could not fail to render him a popular commander.

But the fatigues and exposures of camp life soon produced a disease of the heart, which at length compelled him to leave the service. Early in 1863, with great reluctance, he left his regiment and returned to Elmira. The scene of parting with his officers and men has been described as extremely affecting. "I leave you," said he, as if speaking with a prophetic view of his approaching death, "I leave you, perhaps to die at home, far from the scenes of war and strife. But had it pleased Heaven to have directed otherwise, I could have wished for another fate; I could have wished to have died leading you to battle and to victory. But wherever I go, in health, in sickness, in all that awaits me in life, I shall watch with unceasing interest your welfare as a regiment and as individuals; and when war's trials, dangers and sacrifices are over, with duties well done, that you may be gathered to happy homes in the bosom of peace, duly remembered by a grateful country, will ever be the prayer of him who can command you no more."

On many a war-worn cheek tears glistened as Hathaway rode from the camp, never again to return. On many a weary march, on many a blood-stained field, amid the harvest of death, his regiment gloriously sustained itself. But many, ah! how many, who marched with Hathaway from their beautiful camping-grounds at Elmira, fell, where showered

"The death-bolts deadliest, the thinn'd files along,  
Even where the thickest of war's tempest lowered."

True to their duty, true to their country, they died "upon the ark of her magnificent and awful cause;" then let them not be forgotten; for in their blood are laid our nation's altars. Let us remember that in



their once happy homes a something that vibrated with joy on the heart is still, "and the magic of the voyage of life is no more."

After his return to Elmira, Colonel Hathaway placed himself under the care of a distinguished physician of that city; but as his disease had become so firmly seated that it would not yield to medical treatment, under the advice of his physician he sought the home of his father, in Cortland county. He arrived there in the beginning of March, 1864. He lingered, in dignified submission to that Good Being, "Who has been our refuge from one generation to another," and his submission was entire; there was no alloy of impatience or distrust. He looked upon approaching death with the calmness of a philosopher, the resignation of a martyr, the confidence and hope of a Christian, whose silent communion with his God, whose secret prayers were the votive and acceptable offering of a heart and soul turned from the withering and fading scenes of the world to Him who is the fullness and source of life, thought, beauty, power, love and happiness.

Will it be said that Hathaway was not a professing Christian? Those who knew him best, early learned that within his heart there was a spot sacred to Christian ingenuousness and sincerity. But it never was polluted by pretense, by affected fervor, by cant and fictitious zeal, for he believed that truth is "an emanation from God, a beam of His wisdom, and as immutable as its source." The scene of his sickness and suffering developed his religion, and he bowed to the will of his Maker without a murmur. "I am in God's hands, and His will be done," were sentiments which he uttered, not with commonplace and mechanical formality, but issuing, as his tones and countenance discovered, from the very depths of his heart. Thus he bore his long and painful sickness. During all his illness it was his constant wish that he might die in the morning; and there ever came to him a soft weird

whisper that his prayer would be granted. Was it the voice of unseen spirits hovering near—of loved and lost ones of other days, waiting for him on the confines of eternity?

As the 15th day of April, 1864, drew to a close, a beautiful sunset lingered upon the landscape in front of his room. He watched it until the last rays faded away; then whispering to those standing by, he said:

“So the sun of my life goes down, but it will rise again to-morrow.”

The morrow came, and with its first bright sunbeams death came as gently, as softly, almost as sweetly as that glorious sunlight fell upon the morning air. And thus, in the fifty-second year of his age, died Colonel Samuel G. Hathaway.

He was endowed with a liberal heart—with generous and high-toned sentiments—with a mind keenly attuned to every sense of honor—with a modesty that redeemed him from envy—a geniality which made him welcome in every circle. Whatever were his faults, they floated only on the surface of his character; they could not live in the recesses of a heart like his. As the dew-drops will dim the polished surface of the Damascus blade, but leave no mark on dull, rough iron, so the polished and graceful cast of his mind made error more conspicuous in him than in coarser minds; for, in common with all that is mortal, he had faults—perhaps many—who has not? “Still, they are but the fragments that surround the lofty edifice in its admirable whole—the broken frieze torn from its pediment, leaving still the glory and the grandeur of the Parthenon.”

## JOHN C. SPENCER.

Compared with Ogden Hoffman, Lord Tenterden, and Thomas Noon Talfourd.—His Intellectual Qualities as Exhibited in his Speeches and Writings.—His Manners.—Interview with General Root.—His Birth.—Was a Son of Ambrose Spencer.—The Society of his Early Years.—His Education.—Manner of his First Acquaintance with Dr. Nott.—His Friendship for the Doctor Exhibited at a Late Period of his Life.—Commences the Study of Law with his Father.—Character of Ambrose Spencer.—Young Spencer Appointed Governor Tompkins' Private Secretary.—Makes the Acquaintance and Gains the Friendship of President Madison.—Is Admitted to the Bar.—His Marriage.—Removes to Canandaigua.—General Peter B. Porter.—Spencer's First Experience in Housekeeping.—Ontario County in 1810.—Mr. Spencer's First Appearance at its Bar.—His Politics.—The War of 1812.—He Sustains Madison and Tompkins.—His Popularity as a Writer.—His Pamphlets in England.—Joins the Staff of General McClure and Enters the Service.—His Fellow Staff Officers.—Appointed United States Assessor.—Retires from the Service.—Appointed by Mr. Tompkins District-Attorney for Five Western Counties.—Amusing Anecdote.—His Name not Relished.—Spencer Elected to Congress.—Tammany Society.—Buck Tail Party.—De Witt Clinton.—His Life Intimately Connected with Spencer's.—Candidate for United States Senator.—Rufus King is Elected.—Spencer Elected Member of the Assembly.—Chosen Speaker.—Compared with Calhoun.—His Career in the Legislature.—John T. Irving, Elisha Williams, Gulian C. Verplanck.—Legislature Adjourns amid a Storm.—Spencer Re-elected to the Assembly of 1821.—Defeated for Speaker.—Singular Career.—Resumes the Practice of his Profession.—Clinton Dismissed from the Office of Canal Commissioner.—Public Indignation.—Alfred Conkling.—Mr. Spencer Elected to the Senate.—Heman J. Redfield.—Lieutenant-Governor Talmadge.—His Hostility to Clinton.—Held in check by John C. Spencer.—Anecdote.—The Secret Pamphlet.—The Discovery.—The Check.—Ambrose Spencer a Candidate for United States Senator.—Singular manner of his Defeat.—No Choice.—Nathan Sandford Elected United States Senator, next Year.—His Character.—Judge Kent.—Spencer's Professional Duties.—Holland Land Company.—Spencer's Remarkable Report upon the Title to its Lands.—Effect of the Report.—His Report on the School Question.—Political Prospects of Clinton and Spencer.—Description of Clinton's Death.—The Effect.—Spencer Appointed one of the Revisers.—Benjamin F. Butler.—John C. Duer.—Henry Wheaton.—The Labors of the Revisers.—The Statutes compared with other Written Laws.—Objections to It.—Abduction of Morgan.—Daniel Mosely.—Appointed Special Prosecutor in the Morgan Case.—Appointed Circuit Judge.—Spencer Succeeds him as Special District-Attorney.—Enters on his Duties.—His threatened Assassination.—The Anonymous Letters.—The attempted Assassination.—Case of Mather.—Of Jewett.—Trial of the Former.—Is Discharged.—Trial of Jewett.—Is Acquitted.—Reasons Why.—Spencer's Resignation as Special District-Attorney.—Unites with the Anti-Masonic Party.—Its Leaders.—William H. Seward, Thurlow Weed, Frederick Whittlesey, Bates Cook.—Spencer's Subsequent Political Career.—Connection with the Whig Party.—Removes to Albany.—Appointed

Secretary of State.—A Member of President Tyler's Cabinet.—Advocates the Election of Taylor and Scott.—Is Appointed one of the Codifying Commissioners.—Declines.—His Characteristics.—His Personal Appearance.—Private and Public Charities.—Founds the Albany Hospital.—The State Idiot Asylum.—His Regard for his Native State.—His Death.

It has been said by an eminent English writer, that Macaulay was the philosopher and Lamartine the poet of history. With equal propriety may it be said, that John C. Spencer was the philosopher and Ogden Hoffman the poet of the New York bar. Not that the latter, like Talfourd, actually divided his time between law and poetry; not that he, like Lord Tenterden was more “proud of his iambs and hexameters” than of his triumphs at the bar. Yet Mr. Hoffman did not yield to the opinion, that legal arguments and forensic efforts require no decoration of elocution to render them forcible and effective. He did not, therefore, endeavor to emancipate himself from all oratorical rules; but he knew how to adapt his elocution to profundity and comprehensiveness; to the rules of logic; to the philosophy of “the dull black letter of the law.” Often, however, before a jury, his vivacity—his facility of sentiment—his power of picturesque illustration—his pathos, aroused emotions something like those created by the inspiration of the poet.

The meditative character of Mr. Spencer's mind led him to philosophic disquisitions—to the contemplations of the abstract student—to the coinage of logical deductions. His mind did not “work by sudden and strong impulses, leaping with irresistible force to its conclusions, but by calm and laborious processes, tending silently, yet surely, thereto.” He was not easily excited by the delicate and exquisite beauties of poesy; he never indulged in a variety of imagery—in flights of fancy—in touches of pathos. Therefore his speeches at the bar, in the popular assembly, in legislative bodies, were delivered in language severely correct, scrupulously pure, but free from all

rhetorical drapery. He possessed the power of giving an ethical interest to his subject—of penetrating deeply into it—of establishing, by the clearest and subtlest train of reasoning, those delicate lines which divide apparently analogous precedents.

Another feature of Mr. Spencer's mind was the singular sagacity with which he seized upon questions of fact, the facility with which he disentangled the point in dispute from sophistry and error, and reduced a perplexed and elaborate question of law to a plain problem of common sense. Thus, without the magic of Mr. Hoffman's eloquence, he was as powerful and as successful before a jury as he was before those courts where nothing but plain questions of law are discussed and settled. This was fully demonstrated by the manner in which he conducted the great case of the People *v.* How, at Angelica, in 1824. This was a case peculiarly adapted to the facile and kindling eloquence of Hoffman, but which was managed with signal success by the unimpassioned Spencer, who, by the force of reason and argument alone, overthrew the hypotheses on which was built a powerful and brilliant defense.

When Talfourd took his pen, he became the critical essayist—the poet, who, with strong or delicate touches, impressed, as it were, his own vivid mind on the scenes which he described—the dramatist, whose creative imagination caught a hint from Euripides, and gave “*Ion*, a play of destiny,” to the world; the writer of those sonnets, which are tinged with the style of Wordsworth, who was his ideal of a poet. When Mr. Spencer wrote, as he often did, his pen was an instrument of his great logical powers. The merit of his style as a writer consisted in the facility and perspicuity with which he reasoned, explained, or described.

All his written productions bear the impress of the same powerful and philosophic intellect which characterize his legal and legislative speeches. This is



manifested in the revision of the New York Statutes, those lasting monuments of the legal learning and research of himself and his co-revisers ; in reviewing, criticising, and annotating De Tocqueville's great work on American Democracy ; in writing those legal arguments which often enlightened judges, and determined the decisions of courts ; in those elaborately written pamphlets, which operated with such effect on the public mind ; and in those legislative reports and documents, which so plainly evince his ability as a statesman.

As there was no man that ever made less parade of his intellectual endowments, there were few less disposed to tolerate learned vanity in others, and he often rebuked ostentatious pedantry and empirical impudence with a caustic pen and a satirical tongue which gained him bitter enemies.

The apparent austerity and haughtiness of his manner detracted something from his popularity, yet he was, for many years, a successful and leading politician in the State. Such was the respect which the people entertained for his ability and his unfaltering honesty, that they forgave his faults, and the many unpopular traits in his character. When before them as a candidate for official position, he never failed to receive the strong support of his party. By a popular vote, he was repeatedly elected member of Assembly, State senator, and representative in Congress.

Soon after Mr. Spencer was elected speaker of the Assembly in 1820, Erastus Root met him on the steps of the capitol :

"Spencer," said he, "if you would only see people whom you meet ; if you would get rid of your confounded haughtiness, you would soon become more popular in the State than Tompkins ever was ; but as it is, everybody is afraid of you ; they think you sour, proud, and crusty."

"Why, Mr. Root, I do see people when I meet them, but nature never made a Chesterfield of me ; I

like people, and do not mean to be haughty ; at any rate, I do not feel so," said Spencer.

"I beg your pardon, but you do not see people when you meet them," said Root ; "for instance, I saw Dr. Miller, from Cortland, this morning, and he told me that you don't pretend to notice him, when you meet him : and only yesterday I met you on State-street, and although I gave you one of my best bows, I never received so much as a nod from you."

"Why really, Mr. Root, I have not the least recollection of meeting you yesterday on State-street or anywhere else," was the reply.

"I know that, and I know how to excuse your abstracted thoughts. When you met me yesterday, you were studying out the argument which you are to make next week in the Court of Errors against me ; but the people, our sovereigns, Mr. Spencer, don't understand these matters. They are imperious ; they must have a nod, or a bow, on all occasions, or else we are guilty of rebellion to sovereign majesty. So, learn to bow to everybody, for it is the court etiquette of the day, and makes great men out of well dressed nobodies," said Mr. Root.

John C. Spencer was born at Hudson, New York, August 12th, 1786. He was a son of Ambrose Spencer, distinguished in the history of the State of New York as the able and gifted compeer of Schuyler, Hamilton, Burr, Jay, Clinton, Tompkins, and those other great men, whose elevated patriotism, whose vigorous and comprehensive minds, adapted them to that critical period in the history of the nation, which succeeded the adoption of the first Constitution.

From his earliest years, young Spencer was accustomed to the society of distinguished, learned, and gifted men. His first knowledge of politics was drawn from witnessing those vindictive partizan contests inaugurated by Burr and Hamilton.

He inherited the great abilities, the inflexible will, and many of the imperfections of his father.

At a very early age, he was sent to the Hudson Academy, where his active mind exhibited itself in the rapid proficiency which he made in his studies. Three years at this school completed his preparatory course, and in the year 1799 he entered Union College. During his first year in that institution he was one of the disputants in a debate which took place in the presence of Dr. Nott, afterwards, and for many years, the distinguished president of that college. In the course of the discussion, he indicated that dominant taste for philosophic research, that happy faculty of bringing ancient parallels to bear on contemporary events, which distinguished him in after life. Such was the ability and tact which he exhibited on this occasion, that Dr. Nott conceived for him an admiration which resulted in a life-long friendship.

It is a singular circumstance that the last professional service ever performed by Mr. Spencer was in the defense of this early friend. The work which he did on that occasion was the offspring of the most disinterested friendship, prompted by those precious remembrances of the past so sacred to sensitive minds. The powerful legal gladiator had retired from the bar and from public life; but the appeal of his venerable friend reached him in his retreat, summoning him again to the forum, where his victorious logic exhibited the unimpaired powers of his intellect. But his victory was dearly won. Such was the ardor with which he entered that contest, such the mental labor which it forced upon him, that his health was greatly impaired, and he was soon hurried to the tomb.

No victory won amid the ambitious struggles of his youth or middle age, was more brilliant or more gratifying to him. But it was not the pleasure resulting from the triumph of professional success that gave such peculiar zest to this victory; it was the consciousness that he had aided in the triumph of a friend: that "it was a votive offering laid on the altar of friendship."

It may have called forth censure and criticism from cold and callous casuists, raised murmurs of reproach from defeated interests; but those who, amid the sordid policies, the pitiable selfishness of this wrong world, can appreciate generosity, can understand the emotions inspired by real friendship, will see in this last act of John C. Spencer all that is great in the hero, all that is magnanimous in the martyr.

While at college young Spencer was distinguished for close and thorough application to his studies, for the same thoughtful reserve, the same unpopular reticence, which marked his character as the lawyer, legislator and cabinet minister. In July, 1803, at the age of seventeen, he graduated with honor, and immediately commenced the study of law with his father.

Ambrose Spencer was then attorney-general of the State, in the plenitude of that political and professional career, which renders him a marked and striking character in the history of the State. An accurate reader of men, a keen discerner of those motives which prompt them to action, he could penetrate, by a kind of intuition, into their deeper and more hidden interests. Calm, sagacious, designing and ambitious, he possessed abilities which would have rendered him all-powerful at the court of the Eleventh Louis, and elevated him to a high position in any age. Moved by a will of iron, and prompted by a determined nature, it is not strange that he attained a commanding influence in the age in which he lived.

He was a brother-in-law of De Witt Clinton, whom he opposed, or with whom he coincided, as ambition or resentment dictated. That he often successfully opposed his illustrious and powerful brother-in-law, sufficiently attests the strength of his character and the power of his influence.

Amid the sharp political controversies of his day, he was often attacked through the press by able and powerful opponents; but as he wielded a gigantic pen,



from whose point there flowed a subtle logic, a withering, though polished sarcasm, he was understood to be a dangerous foe in that field of warfare.

At the close of the year 1803, he was appointed by Governor George Clinton a justice of the Supreme Court, and some years later he was advanced to the dignity of chief justice of the State, a position which he held until after the Convention of 1821. Thus, through the long period of over twenty years, he pronounced from the bench of the Supreme Court those opinions which have enriched the legal learning, not only of the State, but the Nation, and characterized him as one of the ablest lawyers and most accomplished judges of his age.

As a writer, he aimed at no graces of language or ornamented diction, and yet his style was of almost crystalline purity—of inherent dignity, and replete with learning.

His manner while on the bench was grave, dignified, austere, stern and decided, but always impartial. He permitted no familiar approach, no importunity from counsel. Lawyers who addressed him used the most respectful language, while he in turn observed a high-toned courtesy toward the bar. In demanding and observing these amenities, Judge Spencer did not stand alone. The judges as well as the lawyers of that period observed and maintained a dignity in the court room which rendered all present conscious that they were in the temple of justice.

Judge Spencer doubted the propriety of innovation in the arrangement of the courts or in the administration of justice. Every encroachment upon the independence of the judiciary he regarded as a step taken toward the disintegration of our legal system and the destruction of our rights.

His imperious nature, his ambition—the means to which he sometimes resorted to gratify it—his unrelenting hatred to his enemies, were among his faults as a politician and legislator. None of these, how-



ever, affected him in the discharge of his judicial duties; and yet as a judge he was not entirely faultless. Such was Ambrose Spencer. From whatever point of view we may examine the character of this extraordinary man—whether as a scholar, lawyer, statesman or judge—although imperfections and errors will be observed—still he must be regarded as one of the great luminaries which have adorned the bench and the bar of the Empire State.

After pursuing his studies for some time with his father, young Spencer was appointed by Governor Tompkins his private secretary. He discharged the duties of this position so acceptably that he became an especial favorite with the governor for life. But, desiring to complete his legal studies, he returned to the office of his father before the expiration of Mr. Tompkins' official term. In 1807, when Mr. Madison was elected president of the United States, he was selected by the electoral college of the State to carry its vote to Washington; and before his return he made the acquaintance of the president elect—an acquaintance which through life was profitable and agreeable to both parties. Thus Mr. Spencer entered public life in his extreme youth, and continued in it until the shades of old age fell upon him.

After his return from Washington he continued his legal studies, without interruption, until July, 1809, when he was called to the bar. Very soon after this event he was united by marriage to a daughter of James Scott Smith, a highly respectable citizen of New York city. Miss Smith was a young lady of rare accomplishments, possessing that high cast of character which eminently qualified her for the wife of John C. Spencer.

At this period western New York began to attract the attention of the adventurous spirit of the East. It was then a comparatively uninhabited country; still the home and the hunting grounds of the aborigines. Among those who decided upon emigrating to that

country, which promised so much to industry and enterprise, was Mr. Spencer. Accordingly, early in September, 1809, accompanied by his bride, he set out for the land of lakes and rivers. After a long and weary journey they reached Canandaigua. The charming country, enlivened by the beauties of early autumn, the prospect of its rapid advancement in cultivation and improvement, and the beautiful location of the village, determined him to make it his future home.

He was then in the twenty-fourth year of his age—in that period of life which intervenes between the effervescence of youth and the practicable energy of manhood. He possessed, however, those qualities of sagacity and learning which were beyond his years. With a few law books and fifteen dollars in money, he commenced that professional career which rendered his name memorable in the history of his native State.

The only boarding place which he could obtain in the village for himself and wife, was in the family of a Mr. Bates, then the keeper of the county jail; and within a few days after their arrival at Canandaigua, they were comfortably domesticated in pleasant rooms in the Ontario county prison.

“I have brought you a long way from your home only to lodge you in jail at last,” said Mr. Spencer playfully to his wife, on taking possession of their room.

“Yes; but it will be a delightful captivity, since you are to share my prison with me; for you know, Spencer, that I am, for the remainder of my life, to play Ruth to your Boaz,” was the pleasing reply.

Mr. Spencer soon rented an office, took possession, and arranged it. With some pride he affixed on its door his sign, with the words “J. C. Spencer, Attorney at Law,” on its surface. The next spring, through the undeviating kindness of the man who never forgot

a friend, Daniel D. Tompkins, he was enabled to have the words "and Master in Chancery," placed upon it.

Among the early friends of Mr. Spencer, at Canandaigua, was General Peter B. Porter, long and favorably known in the history of the State, as a man of high character and unsullied honor, who quietly, and without parade or ostentation, rendered himself of much importance in public affairs—whose influence, like the powers in the natural world, was mild and noiseless, but penetrating and enduring—an accurate observer of men, yet simple and natural in his manners, uniting habits of economy with the most disinterested and liberal charities. A pioneer of western New York, his energetic and enterprising character materially aided in the development of the resources of that beautiful country.

During the autumn of 1809, General Porter completed a very commodious residence in the village, which he leased to Mr. Spencer, and in which he first commenced the duties and responsibilities of house-keeping. In after years he frequently described, in lively language, the first dinner of which he partook in this his "own hired house."

"It was eaten off from a common kitchen table. I was seated on a cheap old-fashioned chair, and Mrs. Spencer occupied a common wooden stool. But every thing on the table, though simple, was nicely cooked, and we enjoyed our meal with a relish rarely equaled at the more sumptuous repasts of our prosperous days."

Thus, with frugality, economy, and self-reliance, the young couple entered life's great contest, and thus they became successful in the struggle.

Within six months after taking possession of this house, as a tenant, Mr. Spencer became the purchaser of it, and for twenty-six years and upwards, it was his home.

In 1809, Ontario county contained within its limits all that territory now included in the counties of Yates

and Wayne, together with all that part of Monroe and Livingston lying east of the Genesee river. From a very early period its bar has been distinguished for the eloquence and learning of its members. A long line of brilliant names adorn its history, many of whom were rendered, by nature and art, almost perfect legal orators, whose eloquence "led criticism itself captive," and who could touch, "with a strong and certain hand, any chord, from uproarious merriment to the deepest pathos, or the most terrible invective."

That Mr. Spencer was able, while yet in his youth, to attain the highest professional distinction, opposed by such competitors, sufficiently attests his ability.

Nothing, however, is so favorable to the development of real ability, nothing so essentially elicits the intellectual strength of young lawyers, as constant intercourse and collision with advocates of superior legal attainments and skill. The contest may at first be unequal, may often result in discomfiture and mortification, but with every failure, strength and confidence will be gained, close study and research resorted to, and at length the nicely graduated scale of professional success easily ascended.

When the great Scottish lawyer, Cockburn, was called to the bar—young, obscure, and diffident—he was compelled to struggle with those giants of the Scottish bar, Clerk, Cranstoun, Moncreiff and Fullerton. Though their inferior in age, in legal knowledge and juridical power, yet, bracing himself for the contest, he boldly entered the lists against them. Regarding it no disgrace to be conquered by such antagonists, he continued the struggle until he was able to maintain his ground, and at length to successfully contend with them. His success shed such lustre upon his name that he soon reached the bench, where, as has been well said of him, "his reputation and efficiency were unequalled."

When Mr. Spencer first appeared at the Ontario



bar, he was the only Democratic or anti-federal lawyer who appeared there. Unappalled by the influence, numbers, and strength of the opposition, and scorning the weak advantage of belonging to "the popular side," he boldly declared his principles, then ably and manfully maintained them, and thus he soon became the standard-bearer of his party in western New York. "Much of the litigation of that day was occasioned by party collisions, and he therefore encountered, from the beginning, a combined opposition, which taxed to the uttermost his 'iron will,' rendering it necessary for him to enter court perfectly prepared at all points; and he found it necessary to be constantly on his guard against the attacks of his political, as well as his professional opponents, to whom he was especially distant and repulsive in his manners." This state of things, however, polished and sharpened the weapons he was compelled to wield; it taught him to parry as well as to thrust, and he rapidly advanced in his profession.

Mr. Spencer always loved solitary study; he never delighted in what is called fashionable life. A mind given to research will see in that society—where persons have no other occupation than fashionable amusement—acuteness of intellect, refinement of manners, elegance and good taste in a certain kind of conversation; but he will also see all profundity of thought, all serious reflections discarded, and hence the glossy volubility of a fop in such circles is preferred to the recondite conversation of the really intelligent and learned.

Accustomed from his youth to the detail of politics, the lawyer was soon blended with the politician. Political dissensions ran high, and were characterized by great bitterness; party feuds were not then as soon forgotten as they are at the present. The easy, gliding scale of political conscience, the temporizing, trimming, bartering policy of modern partisans were then unknown; a rigid fealty to party; an honest, though



bitter opposition; an implacable, unswerving warfare, guided the politician of that day, often engendering feelings of hostility which tinged the amenities of social life for many years.

When the questions and events which led to the war of 1812 began to agitate the public mind, Mr. Spencer, stimulated by an inherent patriotism, joined his fortunes to the party which favored resistance to British aggression, and when war was finally declared, he became the firm supporter of Madison and Tompkins. There were few men at that time who exerted a wider or more direct influence than John C. Spencer. His vigorous mind, his ready and powerful pen, were devoted to the discussion of the great questions which divided the public mind.

One of the pamphlets published by him, entitled "The probable Results of a War with England," attracted much interest throughout the nation; and in Great Britain it was republished in the papers opposed to the ministry, as an unanswerable argument against the policy of the American war.

"Who does not see," said one of the leading opposition journals of the day, "the fatal truths contained in Mr. Spencer's article on the results of this war? If there are those so perverse that they cannot see, its truths will, in time, be brought home to the government, when it is, perhaps, too late. There is not an individual, who has attended at all to the dispute with the United States, who does not see that it has been embittered from the first, and wantonly urged on by those who, for the sake of their own aggrandizement, are willing to plunge their own country in all the evils portrayed by the American writer."

Soon after the appearance of this pamphlet, Mr. Spencer wrote another, on The Pretensions of England as to the Right of Searching American Vessels on the High Seas; which contained a strong and an exhaustive argument against that assumed right. This pamphlet, together with a speech made by John Ran-

dolph, in Congress, previous to its appearance, on The Neutrality Question, greatly influenced our government in its policy on the question of the right of search, and in resisting it. The speech of Mr. Randolph and the pamphlet of Mr. Spencer were both republished in England.

It was one of the merits of Mr. Spencer that he entered thoroughly into his subject, leaving no part unexplained—fearing less the imputation of undue minuteness or superfluity than the more serious charge of passing superficially over the topics of discussion.

Sometimes in his anonymous writings there was the crisp denunciation and terse sarcasm of Junius; the close and frigid philosophy of Calhoun; and then the polished rebuke of Addison; and thus the public were often left in doubt as to the real paternity of his many productions.

After the declaration of war Mr. Spencer continued to wield his pen and exert his influence in urging the people to a vigorous support of the government; but, at length, he too was attracted to the field. In the autumn of 1813 he accepted the position of judge-advocate on the staff of Major-General McClure, and with that officer moved to the seat of war on the northern frontier. The staff of General McClure was composed of young men who subsequently attained much eminence, professionally and politically, in the State. John C. Spencer was judge-advocate, as we have seen; William B. Rochester, afterward a circuit judge, and a politician, who in 1825 disputed with De Witt Clinton for the gubernatorial chair of the State, with such chances of success that he was defeated by a very small majority, was aid; Daniel Cruger, in after times a leading lawyer in western New York, speaker of the Assembly, and representative in Congress, was quartermaster; John F. Bacon, subsequently for many years clerk of the Senate, was paymaster; and Doctor James Faulkner, afterward member of Assembly, judge of Livingston county, and

State senator, was surgeon. Doctor Faulkner is the only surviving member of General McClure's military family, and is a resident of Dansville, New York.

After continuing in the service six months, Mr. Spencer was appointed United States assessor, and in accepting this office he was compelled to tender his resignation. Returning home, he entered upon the discharge of the new and responsible duties thus imposed upon him. The office of assessor was created under the act of Congress passed March, 1813, which provided for a direct tax to aid in the prosecution of the war. It was exceedingly odious to the opponents of Mr. Madison, and was anathematized by them as the first steps toward the establishment of a despotic government. It required great firmness and legal exactness to carry this law into effect, but it was fearlessly and accurately carried out by Mr. Spencer.

In February, 1815, he was appointed by Mr. Tompkins district-attorney for the five western counties of the State. In making this appointment the governor, while he in some measure rewarded a faithful and influential friend, recognized the great legal ability of that friend. It was, however, a position of great responsibility and labor. It compelled Mr. Spencer to attend the criminal courts of distant counties, and thus to perform long and tedious journeys on horseback, over roads which were but a slight improvement on the old Indian trails which then intersected the country. But he was adventurous, and at that age when ambition has no bounds, and he entered upon the discharge of his duties with great alacrity.

It is related that, soon after his appointment, while on his way to attend a term of the oyer and terminer at Batavia, night overtook him when within ten or twelve miles of that village, and he was compelled to remain all night at a hotel. During the evening, while seated by the fire which blazed on the large, old-fashioned hearth, two travelers entered and asked for lodging during the night. Matters were soon

arranged between them and the host, and they too found a place by the cheerful fire. In a few moments they fell into conversation, from which Mr. Spencer soon learned that they had been indicted for burning a building; were "out on bail," and now on their way to Batavia, where they were to be tried at the ensuing court.

They made no concealment of their peculiar situation, and continued to converse in a tone which was audible to all in the room. At length one of them, whose name was Benson, remarked that a new district-attorney had been appointed.

"I can't tell what turn our case will take now; Wisner, the old one, was inclined to give us a chance for our lives. Going to be at court this week, sir?" he asked, turning abruptly to Mr. Spencer.

"Yes," was the reply.

"Are you acquainted pretty generally with lawyers about this country?" asked Ford, the companion of Benson.

"I know some of them," said Spencer.

"Do you know the name of this new district-attorney?" asked Ford.

"Yes; his name is Spencer."

"What! not the Spencer that lives at Canandaigua, I hope," said Benson, his eyes dilating with the interest he felt in the question.

"Yes, sir; I think it is the same man."

"Good God! is it possible? Why, I had rather fall into the hands of an Algerine than into his."

"Why so; will he do anything more than his duty, do you think?" asked Spencer.

"Do anything more than his duty! Why, good gracious! from all the accounts I have heard of him, he is a regular Philistine, as sour as vinegar, but as smart as steel. He will go all lengths to send a fellow to State's prison, right or wrong; and then he'll go along with him to see that the key is safely turned on the poor fellow," said Ford.



“Well, well, this is tough enough, tough enough, to be tried for arson, with John C. Spencer against us. Come, Ford, let us go to bed, though I shan’t sleep much ; and when I do, I shall dream that this Spencer is after me in full chase,” said Benson, as he was leaving the room.

During the afternoon of the next day, while Benson and Ford were seated in the court room, Mr. Spencer came in and took a chair among the lawyers in the bar.

“There,” whispered Ford to his companion ; “there is the man we talked with last night at the tavern, and he is a lawyer, you see. I thought he was, all the time, and I’ll bet he is a good one, too.”

“So will I,” said Benson ; “and that tall, spare form and thin face shows that he has got a great, active mass of brains, and that his mind is too strong and active for his body. I wonder who he is?”

Just then Mr. Spencer arose to discuss some question in a civil matter in which he had been retained after his arrival at Batavia, and, as usual, he made an impression upon all in the room.

“There ; what did I tell you,” said Benson to his companion when the speaker had closed ; “he is what you call able and strong, and I am going to have him help our lawyer defend us.”

In a short time the business in which Mr. Spencer was engaged being disposed of, he left the bar for the purpose of going to his room below. Benson and his friend followed him into the hall. The former, touching Spencer on the shoulder, said :

“We would like to talk with you a little. Don’t you remember us ? We were at the hotel with you last night.”

“Yes, I remember. What do you wish to say to me ?” asked Mr. Spencer.

“Why, you know that we are indicted for burning a building ; and as our trial is soon to take place, we



thought we would like to have you assist our lawyer in defending us," said Benson.

"I do not think you want me to defend you."

"Why not?" asked one of them.

"Because I think you do not like my name."

"We don't know nor care what your name is. We like your appearance, and believe you are a dead match for that devilish Spencer that is against us," said Ford.

"Well, we will see; my name is John Spencer."

"Heavens and earth!" exclaimed Ford, recoiling from him in terror, while Benson remained perfectly speechless with fright.

"You see, gentlemen, that my name is not exactly pleasing to you, and our business is doubtless at an end," said Mr. Spencer, preparing to leave them.

"For Heaven's sake, Mr. Spencer," said Ford, "excuse us for our plain talk to you, and—and, don't—don't bear any harder upon us for it, for we—we are not guilty, we"—

"Enough of this," said Spencer, interrupting him. "I shall do my duty, and nothing more; what you have said will make no difference whatever; one thing, however, I will promise not to do—I will not go with you to the State's prison, just to see that the key is safely turned upon you." With this remark he left them. The next morning their trial commenced, but such was the nature of the evidence that the district-attorney himself was convinced that they were not guilty, and consented that a verdict to that effect might be entered, and they were fully discharged.

In the year 1816, while Mr. Spencer was discharging the duties of district-attorney, he was elected a representative in Congress from the 21st congressional district of this State, by the Clintonian party.

For several years there existed an order of the

Tammany Society in the city of New York, whose badge of distinction was a portion of the tail of a deer, worn in their hats. These persons were distinguished for their high social and political position, their eminent abilities, and their hatred to Mr. Clinton. From this order a powerful combination originated, known in history as the Bucktail party. Absorbing all the elements which rivalry, jealousy, and antagonistic ambition had rendered hostile to him, it soon aspired to the control of the State, and its aspirations were at times realized.

The war which it waged against De Witt Clinton has seldom been equaled in the annals of political history; it exhibited all the intolerance of party strife, and the facility with which parties in our country are created. An eminent French writer has said that "In the United States there is no religious animosity, because all religion is respected, and no sect is predominant; there is no jealousy of rank, because the people is everything, and none can contest its authority; there is no public misery to serve as a means of agitation, because the physical position of the country opens so wide a field to industry that man is enabled to accomplish the most surprising undertakings on his own native resources. Nevertheless, ambitious men are interested in the creation of parties, since it is difficult to eject a person from authority upon the mere ground that his place is coveted by others. The skill of the actors in the political world lies, therefore, in the art of creating parties. A political aspirant in the United States begins by discriminating his own interest, and by calculating upon those interests which may be collected around and amalgamated with it; he then contrives to discover some doctrine or principle which may suit the purpose of this new association, and he adopts it in order to bring out his party, and to secure its popularity."

The popularity of Mr. Clinton had placed him in

the way of many ambitious men, and, since it was difficult to eject him from place, a party was created for that purpose. Nothing, however, so surely indicates his great popularity as the strong combinations created for his overthrow, and the singular power with which he so successfully resisted these combinations.

In the contest between the Clintonian and Bucktail party, Mr. Spencer espoused the cause of the former; his name and career is thus so blended with that of De Witt Clinton that it is impossible to consider one apart from the other. The former aided in electing Governor Tompkins vice-president of the United States, while occupying the executive chair of the State; and he sanctioned the policy which placed John Taylor in the chair made vacant by the election of Mr. Tompkins to the vice-presidency.

Notwithstanding the existence of the Bucktail party, the friends of Mr. Clinton nominated him for governor in the fall of 1816; and, as we have seen, Mr. Spencer received the nomination for member of Congress. They were both elected. In the year 1819, while yet in Congress, the Clintonian members of the Legislature nominated Mr. Spencer for United States Senator from this State. Colonel Samuel Young and Rufus King were his opponents. He received sixty-four votes; Colonel Young fifty-seven. The remaining votes were cast for Mr. King, who was elected. The strength which Mr. Spencer exhibited in this contest shows the political popularity which, at that early period of his life, he had attained.

Although one of the youngest members of the House, being only twenty-eight years of age, he occupied a conspicuous position, and was soon regarded as the leader of New York representatives in Congress. In the autumn succeeding the senatorial struggle, while yet in Congress, he was nominated and elected to the Assembly. On the fourth day of

January, 1820, he took his seat in the State Legislature.

As soon as the Assembly was convened, Mr. Spencer's name was announced as a candidate for speaker. By the joint strength of the Clintonians and Federalists, he was elected. His address delivered to the Assembly on assuming the speaker's chair was impressive, firm, and statesmanlike. In the discharge of his duties as presiding officer of a body composed of such eminent men as was the New York Legislature at this time, he occupied a difficult and delicate position. Slenderly provided with those flexible and plastic qualities which constitute the consummate politician, yet, as a presiding officer, he commanded respect, and even admiration. He possessed much of the self-possessed gravity of Calhoun, with more natural suavity than the great Carolinian, whom he resembled in many points of character. "Like the southerner, he was capable, ambitious, indomitable, free from personal vices; deficient, too, like him, in the plastic and congenial qualities that attach followers to party leaders. The versatility of position that marked the career of both was not the result of flexibility of purpose or vacillation of opinion in either; but of powerful ambition, wielding intellect as a weapon, and opening for itself a career wherever it chose."

It is easy to see that these features in his character, combined with certain family influences, caused him to adopt that course which, in the Legislature of 1820, rendered him the leader of the Clintonian and Federal parties.

At this session of the Legislature an opportunity presented itself for Mr. Spencer to do an act of friendship for Governor Tompkins, and he promptly availed himself of it.

During the war of 1812, large sums of money, amounting to several millions, funds of the general government, passed through the hands of the gover-

nor. In the adjustment of his account the action of the State Legislature was invoked. As the governor demanded a commission on the money disbursed by him, a committee, appointed by the Legislature, awarded it to him, directing it to be paid on the order of Archibald McIntyre, then comptroller. But a dispute arising between the governor and Mr. McIntyre, as to the construction of the resolution recommended by the committee, another resolution was introduced into the Assembly, sustaining the comptroller's manner of auditing the amount.

The introduction of this resolution elicited a debate of an exciting and deeply interesting character. It was the great debate of the session. Mr. Spencer, Elisha Williams, General Root, Messrs. Irving and Romaine, of New York city, participated in it. Mr. Spencer strongly favored the law or resolution as Mr. Tompkins construed it, and supported his position in a speech which greatly enhanced his reputation as a legislative debater. He was warmly supported by Elisha Williams, and as strongly opposed by General Root.

At this period, perhaps no men in the State occupied a higher position than Messrs. Williams and Root. The former was one of the ablest lawyers and accomplished speakers then at the bar of the State. So extensive was his reputation that he was frequently retained in trials which occurred in distant counties; and he was now engaged in the city of New York, now in Albany, now in western and now in southern New York. As a lawyer, it is not invidious to say of him that, though surrounded by eminent advocates and civilians, he had few, if any, superiors. As a legislator, the records of the Assembly are the best evidence of his ability. As an indication of his popularity, he represented the county of Columbia in the Legislature eight years, nearly in succession. Nor is this all. After his removal to Albany, the citizens of Columbia county testified their confidence in his in-



virtue and ability by electing him as their representative in the constitutional convention of 1821—a mark of public favor seldom equaled.

As the biography of General Root appears in another part of this work, it is sufficient to say here, that, in many respects, he was the peer of Elisha Williams.

Mr. Irving was for many years an eminent judge of the New York Court of Common Pleas. To him the State is indebted for the law abolishing judgments for full costs in actions for assault and battery, slander, &c., where nominal damages only were recovered. No matter how frivolous the case, how trivial the offense, in such cases a verdict for six cents insured a recovery of a heavy bill of costs, and hence, the courts in the State were incumbered with a vast amount of petty actions, brought solely for costs.

Judge Irving called the attention of Governor Clinton to this abuse, in an elaborate and ably written memorial, which, on the 10th of February, 1828, was embodied in a special message by the governor, and sent to the Legislature, then in session, and the obnoxious law was repealed. There is another and deeper interest attached to this message; it was the last official act of De Witt Clinton; he died the next morning after sending it to the Legislature.

Samuel B. Romaine was a distinguished member from the city of New York, and subsequently speaker of the Assembly.

Such were the men who participated with Mr. Spencer in the great debate concerning the matters of Governor Tompkins; his position was in the end fully sustained, and his demand for percentage allowed. It was natural that a question containing so many elements of conflicting interest, invested with so many recollections of the recent war, debated by men of such eminent ability, should be memorable in the legislative history of the State.

The legislature of 1820 is characterized for the sin-

gular and bitter party dissensions which divided it. Mr. Spencer, as the leading Clintonian, by his abilities, his influence, his energetic vigor as a partisan, incurred the hatred of Mr. Clinton's enemies to such an extent, that when the time for adjournment approached, they refused to concur in the usual vote of thanks given to the speaker at such times, and the session closed in a storm.

In the autumn of 1820 the enemies of Governor Clinton triumphed in the State, and a Legislature was elected decidedly hostile to him. But John C. Spencer was re-elected; and in him Clinton had a powerful champion. An extra session of the Legislature convened in November for the purpose of choosing presidential electors. Mr. Spencer was again a candidate for speaker at the session of 1821, but as his friends were largely in the minority he was of course defeated.

But, as the acknowledged leader of the Clintonians in the Assembly, he occupied a no less distinguished position. With his large experience as a legislator he often baffled the majority against him, and gained such decisive advantages in those party contests which occurred in the House, that the foundation for the future triumph of his chief was successfully laid. In the bill for the proposed constitutional convention each party saw the germ of future political supremacy, and the struggle was thus intensified. In the debates on this question all the energies of Mr. Spencer's mind were roused, and his intellect never attained higher triumphs than in his replies to his antagonists.

The legislature of New York at this time was graced by men of unusual brilliancy and power. There were then heard the speeches of Gulian C. Verplanck, containing a union of subtlety and grace, of philosophic depth and literary excellence; the florid eloquence of Erastus Root, mingling sagacious and profound principles of constitutional liberty, the in-

herent rights of the people, with the policy of a Richelieu, in a strain of oratory, which flowed naturally, sometimes gracefully, interrupted occasionally by an exaggeration of passion, which exhibited his zeal; the attractive oratory of Elisha Williams, glowing with the strength of his illustrations, the felicity of his expressions, occasionally abounding with an excess of ornament, but replete with reason, which guided and enlightened; and the keen sarcasm, the terse, severe diction of Spencer, in which no redundant word or fanciful expression was permitted, who redeemed the abstruse subjects which he discussed by a union of subtlety and grace, and with the utterances of a mind glowing with thought and research.

After a long contest and various party maneuvers, the bill for the convention passed both branches of the Legislature, and became a law. But, through the management of the Clintonian leaders, it passed in a form that, notwithstanding the great majority against them, they gained as much, if not more, political power than the dominant party.

In due time the convention assembled. It was composed of the ablest and most distinguished men in the State; perhaps, in point of real ability, varied learning, and patriotism, the convention of 1821 has never been equaled by any deliberative body in the State. Its deliberations and proceedings now make a part of history, and most of its actors have left the scenes of earth. How many schemes of ambition and wealth; how many full-blown hopes of power and place; how much transient distinction and ephemeral elevation; how much bartering of all that is lofty and pure for some "bad eminence," has that Assembly chamber witnessed since that convention assembled there? And like scenes are to follow; crowds, impelled by the same ambition—the same schemes—will press on to their destiny—to success and failure—to forgetfulness and oblivion.

After the adjournment of the Legislature of 1821,

Mr. Spencer returned to the practice of his profession, which had now become so extensive that he was compelled to devote his entire attention to it. The reports of the Supreme Court and the Court for the Correction of Errors, through a long series of years, exhibit the large number of cases conducted by him in them. And as they are the expression of extensive legal learning, and involve the consideration of almost every question, which, during that period, was settled by these courts, their examination would be profitable to the legal student.

Mr. Spencer continued steadily devoted to his profession, until the events of 1824 again called him before the people. When the Legislature of that year was on the point of adjournment, a resolution came down from the Senate to the House dismissing Mr. Clinton from the office of canal commissioner. This resolution was promptly passed by the Assembly. As there was no pretense that Mr. Clinton had failed to discharge his duty with fidelity and ability, his dismissal was regarded as a high-handed act of party malevolence; but the act intended to annihilate him was the talisman which restored him again to power. It created the most intense excitement and indignation throughout the State. An immense meeting was held at Albany, at which resolutions of great strength and power denouncing the removal, were unanimously passed.

These resolutions were drawn by Hon. Alfred Conkling, now of Geneseo, N. Y., father of Senator Conkling, then a young but distinguished lawyer, and an intimate friend of Governor Clinton.

He was subsequently appointed by President Adams district judge for the northern district of New York. This appointment was made on the recommendation of Mr. Clinton, then governor of the State, General Van Rensselaer, and other eminent citizens. While in Congress in 1822 and '23, Judge Conkling made the acquaintance of Mr. Adams; a



warm and intimate friendship commenced between them, which ended only with the death of "the old man eloquent." It was, therefore, a pleasure to him, by this appointment, to recognize the eminent legal abilities, profound learning, and purity of character, of his friend from New York.

After serving many years as district judge, winning the admiration and confidence of the bar and the public; after serving his country as minister to a foreign nation, Judge Conkling has retired to that quiet and repose which his life and services so well merit.

So strong was the popular feeling in favor of Mr. Clinton, that in August, 1824, he was nominated for governor. To strengthen him in the western counties, Mr. Spencer was urged to accept the nomination for Senator from the eighth senatorial district. He consented, and both Spencer and Clinton were elected; the latter by a majority so large that, in the facetious language of Dudley Marvin, "he got a larger majority than he would had he ran alone." Once more John C. Spencer became a member of the State Legislature.

As a member of the Court for the Correction of Errors, his legal learning was now exercised judicially, and for four years his opinions pronounced in that court enriched its reports.

Among the eminent men elected to the Senate in the fall of 1824, was Heman J. Redfield, who is now nearly the sole survivor of all the members of the forty-eighth Senate. His recollection of his compeers, and all the events of his active professional and political life is fresh; as he wields a ready and able pen, his description of those days contributed for the various journals of the State, are replete with interest and information. He was an early and an intimate friend of Mr. Spencer.

General Talmadge was elected lieutenant governor by the Clintonians; but the session of 1825 had



hardly commenced, when it became apparent that he, with several of the senators, had become hostile to Mr. Clinton, and determined to thwart all his schemes. This rendered the position of Mr. Spencer in the Senate a fortunate circumstance for the governor; it greatly complicated the labor and responsibility of the former; but his experience, his skill in all parliamentary proceedings, his cool deliberation, his sleepless vigilance, enabled him to neutralize, and often defeat the machinations of the hostile lieutenant-governor and his friends.

It is related, that for some time after the opening of the Legislature, General Talmadge and his friends were engaged in preparing a pamphlet in which Mr. Clinton and his friends were bitterly attacked. It was written with that ingenuity and plausibility, which, to say the least, would have rendered it an unwelcome, if not a dangerous affair; but before it was ready for distribution, Mr. Spencer by some means became aware of its existence, and he obtained a copy of it. To the astonishment of Talmadge, who believed the forthcoming document to be a profound secret, a pamphlet written by the powerful pen of Mr. Spencer appeared before the public. It completely outflanked the position of his opponents, and yet it developed nothing which indicated any knowledge of the existence of their engine of attack. Never was there a more complete, or a more skillful refutation than in this instance.

Nothing could exceed the chagrin and indignation of Talmadge when he read Spencer's article. The general was a constant talker; and he never ceased to openly denounce Clinton, and those who sustained him.

"I regard De Witt Clinton," said he, the next morning after the appearance of the pamphlet; "I regard De Witt Clinton as a very dangerous man, whose ambition is more to be feared than Burr's ever was; but he cannot be compared to that dark, de-

signing, ever-plotting Spencer. Why," he continued warmly, "he has the faculty of a magician, joined to all that makes up the character of a Catiline."

The term of service of Rufus King, a senator in Congress, was drawing to a close. Owing to his age, he could not be re-elected. Prominent among those who were named as his successor, was Ambrose Spencer, who since the adoption of the Constitution of 1821, had remained the firm and powerful friend of Mr. Clinton. This brought that eminent personage again before the public.

The first day of February, 1825, was the day fixed by law for the choice of United States senator. On that day an animated contest took place in the Legislature. In the Senate Judge Spencer received the largest number of votes of any one candidate; and a resolution was offered declaring him duly nominated on the part of the Senate; but through the machinations of General Talmadge, the resolution was lost, and that body adjourned.

In the Assembly he received a vote of seventy-seven to forty-five, and he was declared duly nominated. But as the Senate had adjourned without presenting a candidate, no choice for senator was made. This contest was deepened and intensified by the singular presidential canvass which then had commenced throughout the nation.

No senator having been elected during this session, the State of New York was represented in the United States Senate, by Martin Van Buren alone, until February, 1826, when Nathan Sandford was unanimously chosen by the Legislature as the successor of Rufus King.

Mr. Sandford had been appointed chancellor of the State in 1823, as the successor of the illustrious Kent, who had become disqualified from holding the office by age. Though it was the fortune of Chancellor Sandford to succeed one of the most eminent and learned jurists in the nation, he brought to the office

much judicial ability ; he had all the technical learning of the bar, where he was conspicuous for his talents, and accustomed to a strict adherence to the technical rules of his own practice. Yet, like Lord Mansfield, he was averse from suffering justice to be entangled in a net of forms ; and therefore beheld, in the Court of Chancery, something more than a gigantic compromise. A diligent search through the equity reports of his time will convince the reader of Chancellor Sandford's inherent love of justice, his patience, his learning, and his perfect appreciation of equity "as a system which is equal, just and good, mitigating or moderating the rigors of the common law, where every matter that happens inconsistent with the design of the legislator, or is contrary to natural justice, may find relief;" and therefore he was, in many respects, qualified to succeed "New York's great chancellor."

Mr. Spencer participated in all the contests of the session of 1825. Between his senatorial and professional duties, he was never subjected to more severe and ardent labor than at this period. The Senate adjourned on the 21st of April, 1826, and he was relieved, for a time, of his legislative duties.

About this time an instance occurred, which gave Mr. Spencer additional popularity as a lawyer. For a long time the title of the Holland Land Company to the land in several of the western counties had been involved in some doubt, although really no original title in the State is clearer. After the courts, in several closely-contested suits, at different times, had decided in favor of the company, sustaining their title, the disaffected parties thought proper to bring the subject before the Legislature, which they did in the winter of 1837. A majority of the committee to whom the subject was referred submitted a report favorable to the petitioners. A minority report, drawn by Mr. Spencer, counsel for the company, was also

submitted. That report alone characterizes him as one of the most learned and gifted lawyers of his day.

It was a case which his mind was properly qualified to analyze. He dissipated all doubts that surrounded the claim of title. He applied to every technical point a knowledge of the law, which rendered them plain and clear. Finally, it was perfectly conclusive. All further litigation was arrested—all further legislative action ceased. It quieted the apprehension and doubts of all. It was widely circulated and generally read, gaining for its author the gratitude of all concerned in this great question.

In the autumn of 1826 Mr. Clinton was again elected governor, and he entered on an administration which indicated power and prosperity. Nathaniel Pitcher was elected lieutenant-governor, and Clinton was saved from the hostility of General Talmadge in the senate.

The Legislature of 1826 was not characterized by so much partizan strife as its predecessor, though many of its acts were of the most vital importance to posterity.

On the 4th of February Mr. Spencer, as the chairman of the Committee on Literature and Education, made his celebrated report on that part of the governor's message which related to common schools; and he also reported a bill to increase the common school fund, to promote the education of teachers, and to regulate their appointment. This remarkable report presented many didactic expositions of the wants of the great cause of education, and the interest it holds to human progress. It still remains an enduring monument of well-directed zeal in the public service—of large, comprehensive and practical views of educational improvement, and of the statesmanship of its author. Thus, intensely devoted to his duties as a legislator, one session of the Senate succeeded another, until at length the memorable term of 1828 opened, with every prospect of prosperity, of increas-



ing power to the administration and to Mr. Spencer; but, long before its adjournment, an event occurred, which terminated all the contests and collisions—all the schemes of ambition connected with De Witt Clinton.

On the morning of the 28th of February, 1828, Mr. Clinton arose in his usual health, enjoyed the pleasant scene of the family circle at the breakfast table, joining cheerfully in the conversation that enlivened the meal. When breakfast was over, he spent some time in reading the morning papers, which had just been brought in, and then walked to the executive chamber in the capitol. On his way he met several friends, to whom he gave a salutation more than usually cordial.

Those who saw him in the discharge of his duties that morning, remembered the cheerful manner in which he disposed of them. His usual reticence had passed away, and his conversation flowed pleasantly and agreeably. On his thoughtful face, which would have been a model for Angelo or Raffaëlle, so plainly did it speak the dignity of intellect, the impress of care and reflection had for the time given way to a placid look, which told the beholder that all within was peace. Was it the sunset of life, shedding its last radiance where darkness and night were so soon to reign?

He continued in the discharge of his duties until a half hour before the adjournment of the Legislature for the day, when he left the executive room, passed through the vestibule of the capitol, and walked homeward.

At this time, John C. Spencer sat in the Senate chamber, silent, watchful, thoughtful, and formidable, the pillar that supported Clinton's administration—rendered permanent and powerful by the fortunate result of a bitter and fierce contest. He was satisfied with the present, and looked confidently to the future for a still higher political advancement for himself and



his chief. At this time, the Assembly chamber hummed with the usual business of the day.

There was Ogden Hoffman, the charming orator, whose eloquence riveted attention, and drew upon him from gallery and lobby, eager admiring eyes. There too, were Talmadge, Butler, Williams, Skinner, and Emmet; while in the chair, presiding over all, sat Erastus Root, then a gifted statesman, a man of large intellect, pleasing eloquence, and great ambition. He was now in the full success of his political prosperity, looking confidently for higher honors, which he believed the nation was soon to bestow upon him; and thus, amid the great business of legislation, De Witt Clinton passed out of the capitol. How little did he, how little did the busy legislators above him, dream that he was leaving it for ever, that the man around whom all this legislative machinery revolved, in the midst of a career which made "ambition glorious," was even then standing on the brink of the grave.

Once more the statesman reached his home; once more he met his family around the festive board. On leaving the table he sought his study, where he transacted some matters of business, wrote and answered several letters, and then entered into a cheerful conversation with two of his sons who were present. Although the dread messenger was hovering near—even in the room, the conversation flowed on. It was a holy moment—a moment when each word then uttered was to live in the memory of those sons through life, because uttered by a revered and illustrious father on the very portals of the tomb.

Suddenly, while speaking, Mr. Clinton placed his hand upon his breast, complained of a sharp pain—the next instant his head fell backwards; the young men sprang to him, raised his head, but the mute lips—the rigid brow—the dull film that was drawing over his eyes, and the fallen jaw, told them that only the dust of De Witt Clinton was before them.

In a moment, all within the executive mansion was

sorrow, grief, and agony, the great, the brilliant light that illumined it had suddenly gone out. He around whom centered so much love, such deep affection, had left for ever.

Soon the fearful words, "Clinton is dead!" flew over the city; on Change—in the busy mart—in the glittering empire of fashion—where wealth gloated over its glittering heaps, where poverty shrunk from the biting frost—where ambitious schemes were ripening or fading like "the stuff which dreams are made of,"—everywhere, men and women paused, with pallid cheeks and hushed voices, repeated the words, "Clinton is dead."

Then along that wonderful work—the offspring of his genius, that stands as his proudest monument, the gloomy tidings ran, that its great projector was dead—that Clinton was no more; and the State of New York draped itself in mourning for her illustrious son, whose genius had written "*Empire*" on her shield.

The death of Governor Clinton dissolved the party that rallied around him, of which John C. Spencer was the moving spirit, and the scenes of the political drama in the State were shifted for the entrance of new actors.

"Before the death of Clinton, however, he appointed Mr. Spencer to a work with which his reputation will ever be identified—a task eminently congenial to his habits of thought, his extensive knowledge of the law, and his powers of analysis—the revision of the statutes of the State."

The commissioners for the revision first appointed, were John C. Duer, Benjamin F. Butler, and Henry Wheaton. The appointment of the latter, minister of the United States at the court of Prussia, left a vacancy, to which Mr. Spencer was appointed.

It has been said by an eminent commentator, that those who are engaged in the administration of the law are not the most properly qualified to amend it, that the great legal reforms which have been effected

in England were through statesmen, who had, in some measure, outgrown their previous education as lawyers.

The singularity of this remark is the more apparent, when the labors of Brougham and Lyndhurst are remembered. To a practical mind it must appear, that those engaged in the practice of the law can best understand its demands for reform, and more properly appreciate the application and practical nature of proposed amendments to existing laws.

The New York revisers were selected for their high standing as lawyers, under the conviction that their duties demanded the most extensive legal learning. It was a work of great labor, but it was successfully finished; it effected many changes, facilitated many of the operations of the law, and reduced it to a practical system.

Like Justinian, the revisers undertook the great work of methodizing existing laws from those enactments, statutes, and precedents, which were scattered through so many volumes that they may be compared to the "load of many camels."

Compared with the *Edicta Prætorum*, the works of Tribonian and his coadjutors—with the Frederician Code, or the Code Napoleon, the Revised Statutes of the State of New York, as a system of written laws, are vastly superior to them all, and the revisers succeeded in reducing existing laws to a system best calculated to effect the object of all laws, the protection of society.

But on the question of special pleading, they did not escape censure from a class of lawyers, who contend that the statutes did nothing to restore the mathematical perspicuity of that system of pleading—that "the revisers continued the old system of the general issue, as a summary denial of the plaintiff's case, without giving him the least notice on what special defense the defendant intended to rely, instead of pleading specially the substance of his defense." As

has been said by a recent writer, "the revisers of 1828, adopted and continued the common law method of proceeding, letting it stand with the relaxation of its fundamental rules, or the abuses with which it was afflicted in England, and, generally, in our own country. The usage of the original writ was abolished, but the classification of actions, these had originated, and the distribution of the subject of litigation into these, were sedulously retained.

In pleading, several counts to the plaintiff and several pleas to the defendant were allowed, even though there might be but one distinct matter of complaint or defense.

The very same evils, from the very same causes, in England, led to the parliamentary law commission, its investigations, reports, and the remedy; namely, the restoration of the system of special pleading by formula in actions at law."

Though Mr. Wheaton did not participate in the great work of revision, in January, 1836, he gave to the world a work, in many respects, scarcely less meritorious—his *Elements of International Law*; a highly appreciated treatise, "very valuable to persons engaged in diplomatic and other forms of public life."

The labors of Mr. Spencer while in the Senate, were divided between his legislative duties, and as a member of the Court for the Correction of Errors, his judicial duties, and his duties as one of the revisers; but as was said of Lord Eldon, his prodigious industry seemed to rejoice in the accumulation of toils, and he applied himself with unremitting perseverance to every minute portion of each subject, with indomitable energy.

He retired from the Senate on the adjournment of the Legislature in April, 1828, having served in that body since January, 1825, leaving behind him many distinguishing marks of his legislative career: among which, was his action in abolishing imprisonment

for debt—the passage of many acts reforming the laws of the State, which is adequately appreciated by the legal profession; and, while speaker of the House, reducing its business to that systematic detail by which it has been guided since that period. His action as chairman of the Committee on Literature has already been alluded to.

In the year 1826 the abduction of Morgan occasioned great excitement throughout the State, and at length resulted in a new and powerful party. This event is more fully described in another part of this work.

The detection of the perpetrators of that deed was a matter in which the executive, and the various judicial and ministerial officers of the State became deeply interested. Heavy rewards were offered and a secret police organized. Finally, no measure which could possibly tend to the detection of the offenders was omitted.

The late Daniel Mosely was appointed a special prosecuting officer to examine into the offense, and, if possible, bring the culprits to justice.

Mr. Mosely was a strong, effective and learned lawyer of the Onondaga bar. He entered upon the discharge of his duties with an energy which promised the most complete success. Many arrests were made, and in one instance, several of the persons pleaded guilty to the crime of conspiring to abduct Morgan, and were severely punished.

Mr. Mosely continued to discharge his duties as such prosecutor until January, 1829, when he was advanced to the office of circuit judge. Mr. Spencer was immediately appointed his successor by Governor Van Buren.

This appointment was exceedingly gratifying to all parties interested in the conviction of Morgan's destroyers. Spencer's eminent abilities and large experience as a lawyer and public prosecutor warranted the expectation that the matter would be thoroughly



investigated. Under his vigorous measures keen and experienced detectives were employed, and every plan adopted which promised success. Many prominent individuals were arrested and indicted.

The energy and determination with which Mr. Spencer entered upon the duties of his office brought upon him the deep enmity of all persons connected with the Morgan affair. Serious fears were entertained by his friends that he would become the victim of the assassin. These fears were intensified by various anonymous letters which Mr. Spencer received. Some of them admonished him of impending danger, while others contained the most fearful threats. Two of these letters were couched in the following language :

“To JOHN C. SPENCER :

“*Sir*—As you are seeking for the blood of those who never injured you, remember that your own blood will run quite as easily and as red as theirs. Therefore, *Beware!* BEWARE!!  
REVENGE.”

“To HON. JOHN C. SPENCER :

“*Dear Sir*—Your life is in danger! Assassins are upon your track! Do not regard this warning lightly, but look to yourself, for you are watched by secret foes!  
A FRIEND.”

Mr. Spencer himself did not participate in the fears of his friends, and the anonymous letters did not cause him the least uneasiness. But in a short time he was convinced that there was a terrible earnestness connected with them. Two daring attempts to assassinate him followed each other in quick succession; which were providentially thwarted.

One dark evening, as he was returning home from his office, a man armed with a sword drawn from a cane, made a desperate lunge at him, which would have proved fatal had not the man stumbled over a stone as he sprang towards his intended victim,

thereby causing the weapon to miss its aim. Before the attempt could be repeated the assailant was disarmed and arrested ; but Mr. Spencer refused to prosecute him, and he was discharged.

Soon after this, he was returning alone from Penn Yan. Night overtook him while yet several miles from home. The evening was pleasant, the road was good, and, absorbed in his thoughts, he rode along unconscious of danger, when suddenly a bullet whistled past his head, and the sharp report of a rifle rang in his ears. Again he escaped unhurt, and redoubling the speed of his horse, he reached home in safety. Soon after this, he received a singular anonymous letter, the words of which many believed to be true. Among other things the letter contained the following :

“ It is useless for you to attempt to convict any person for killing Morgan, for he is still alive. He was taken to Canada, the Canada lodges refused to receive him. He was then offered a large sum of money to leave the country forever, and to leave immediately. If he refused, death would follow, sure and certain. As he published his book for money, he was willing to banish himself for a price. He is now in a foreign country, under an assumed name, and he will never be heard from again. ‘ Murder will out,’ they say, but as Morgan was never murdered, in this case there is no murder to come out. Time will pass on, you will go to the grave, and so shall I, and so will all that now live, but it never will turn out that Morgan was murdered.

“ INVISIBLE BUT TRUE.”

Notwithstanding the threatening letters he had received, notwithstanding the attempts which were made upon his life, Mr. Spencer was not deterred from vigorously discharging his duties. He laid the heavy hand of the law upon those whom he believed to be guilty of participating in the murder of Mor-

gan, and sternly demanded their conviction. Several important trials took place, among which was the case of the People *v.* Mather, and that of the People *v.* Jewett. These trials were the great events of the times.

The former was one of those cases eminently calculated to be influenced by the excitement which pervades the public mind, rendering the administration of justice subservient to the clamors of the populace. But the learned and able judge who presided, felt that "justice is the end of government—the end of civil society." He felt himself to be the organ through which the voice of justice was to be heard—the representative of the law.

So faithfully did he discharge the delicate and responsible duties committed to him, that no political influence, no party dissension or popular clamor tainted the proceedings of the trial; proving that an intelligent, enlightened judiciary is the most imposing, authoritative, and protective branch of a free government "that while partizan zeal expends itself on transient interest, which derives its chief importance from its fealty to party, it is the province of the judiciary to apply those solemn and universal laws of justice on which the life and liberty of every individual essentially depend."

With such a judiciary, the jury teaches every man "not to recoil before the responsibility of his own actions, and impresses him with that manly confidence without which public virtue cannot exist, and invests each citizen with a kind of magistracy."

The address of Mr. Spencer to the jury in the case of Mather, without the passionate invective of Sheridan in his effort against Warren Hastings, was, in reason, unity, force, and intellectual energy, equal, if not superior to that remarkable legal oration.

At last the case was given to the jury, who, after a protracted consultation, rendered a verdict of not guilty. This result considerably irritated Mr. Spen-

cer, for he believed Mather guilty; but those who look on that trial, after the lapse of over forty years, with no knowledge of the passions, the malevolence, the prejudice of the day, will regard it as one of those leading cases in our reports, establishing many philosophic and reasonable precedents; those who turn back the page of history and learn the great public excitement amid which the trial took place, will regard our legal system with veneration—will look upon it as a rock against which the waves of popular commotion will beat in vain.

Not contented with the verdict of the jury, and the various rulings of the court, Mr. Spencer removed the case to the General Term of the Supreme Court, and in September, 1830, it was argued before that tribunal. There, Mr. Spencer contended with all his energy and ability for a new trial; there he again made one of those singularly effective forensic efforts, the result of the amplitude and fertility of his intellect; but a majority of the court was against him, and he was again defeated. With this decision the case of Mather rested for ever.

His trial, however, developed circumstances which pointed strongly to the guilt of others, and the case of the People *v.* Jewett was tried at Lockport. In this case, William L. Marcy, then one of the justices of the Supreme Court, presided, and a scene of turbulent popular excitement again exhibited itself; but it was repelled with calm dignity—with unsurpassed judicial impartiality, by the gifted judge who presided.

This time, the accused was in the grasp of the law, his conviction seemed certain; but the witness who alone could reveal his guilt, with sealed lips stood mute before the court—locked the story of the prisoner's guilt in his own breast, and, rather than reveal the fate of Morgan, calmly listened to that sentence of the court which immured him in a gloomy dungeon.

Again was John C. Spencer foiled in his attempt to



bring the dark conspirators to justice. But his confidence in his future success was unimpaired; his secret emissaries had revealed to him other guilty persons, and he prepared to proceed with other prosecutions. But to enable him to do so with any hope of success, he demanded of the State the sum of two thousand dollars. This sum, he insisted, was necessary to enable him to procure the attendance of the necessary witnesses, employ special detectives, and to carry into operation the plans which he had matured for discharging successfully the duties of his office.

But, to his chagrin and astonishment, the governor refused to listen to his demand, and he instantly tendered his resignation, retired from a field on which he believed he was soon to be victorious; and the fate of Morgan rests for ever amid the inexplicable mysteries which from the first surrounded it.

At this time, political Anti-Masonry, which had lurked in private dwellings—gathered strength by the fireside—drew nurture from pamphlets and newspapers, began to exhibit itself in strong and threatening proportions. Mr. Spencer and his friends believed that Governor Throop refused the pecuniary assistance demanded, fearing that the discovery of Morgan's fate would enhance the growth of the new party up to a strength sufficient to render it a dangerous rival to the Democratic party. This belief led John C. Spencer to unite his fortune with the Anti-Masonic party.

Among those who were most influential in organizing that party, were Thurlow Weed, Frederick Whittlesey, and Bates Cook. These men and their able compeers, were rarely qualified for pioneers of the new party. Perfectly acquainted with the temperament of the people, they knew how to bear with their caprice, to be indulgent to their eccentricities, to foresee and forestall their wishes, to awaken their sympathies, and to produce

“The loud collisions of applauding hands.”



Few persons possess the executive abilities of Mr. Weed in conducting and managing the machinery of party. In the earlier period of his life, he learned those practical lessons of human nature, and gained that general information, which developed the ability of reading men—of penetrating their motives—of scanning the true spirit of the times, eminently qualifying him for superiority and influence as a politician. A strong, vigorous, and graceful writer, his pen was a source of strength, as well a defense to his party and himself.

Like all great party leaders, while he gained the admiration of many, and attached to himself strong and powerful friends, he incurred the censure of the envious, and those who could not, or would not, concur in his policy. Perhaps at no period of his active life, was he free from bitter enemies, in his own party, who, while they condemned him, acknowledged his ability, and his usefulness, when that party was facing the enemy and contending for victory.

When political Anti-Masonry was absorbed by the Whig party, he became one of the great leaders of that party. His judgment, experience and versatile knowledge aided its other leaders in rendering it a formidable and often a triumphant opponent to the Democracy in the State. When the Whig party was merged in the Republican party, no man was more active than he—none more influential in combining the material out of which it was formed, and in blending discordant interests in one absorbing scheme of political ambition—in one community of mutual interests. In adjusting, as he often did with the hand of a master, the nice and delicate machinery which is the motive power of political, and often legislative action, he made mistakes and fell into error; but on the whole, as we have seen, he was of immense advantage to his party; and whatever were his faults, he was well aware that he who enters the political field as a leader must keep his eyes wide open to every

movement of his own partizans as well as the movements of the common enemy—that vanity, spleen, self-love and ambition must all be held in abeyance before the multitude, fondly called by aspiring politicians, “the dear people.”

In the infancy of the Anti-Masonic party, Weed, Whittlesey, Cook, and their able partizans, sustained it, until William H. Seward, John C. Spencer, and other prominent men, united with it.

These accessions soon gave it power and vigor. For a time it assumed the proportions of a great political party; but, like all organizations founded on exciting popular themes, it soon withered away, or rather, was absorbed by the Whig party, which was founded on broader principles of State polity.

Mr. Seward was then developing those rare intellectual powers which have since rendered him an illustrious statesman, who, amid his loftiest career, never forgot a friend, however humble—never ceased to labor for his advancement as long as he entertained the belief that he was worthy of his friendship and assistance. Thus he carried with him to his retirement from public life the heartfelt gratitude of many whom, during his long public career, he assisted in various ways.

Mr. Spencer again represented the county of Ontario in the Assembly of 1831. As jurisprudence is the complement of legislation, supplying what is left of the latter in the administration of justice, his connection with the revision of the statutes rendered his presence in this Legislature of the highest importance. He was, therefore, as chairman of the Judiciary Committee, principally engaged in reducing the statutes to a more practical system of legal polity, and he mingled but little in debates.

He was re-elected in the fall of 1832, and at the opening of the session of 1833 he was a prominent candidate for speaker, but his party being in the minority, he was of course defeated.

In the struggle to elect Francis Granger, the Anti-Masonic candidate for governor, Mr. Spencer took a conspicuous part. His party was overwhelmed by the election of Mr. Throop, but he continued inflexibly attached to it, and was one of those who aided in combining it with the Whig party. The strong, quiet grasp which the leaders of the former party had on the rank and file of those who composed it, enabled them to hold its component parts together, to effect the transfer, with singular facility, and to raise, on the mingled elements of a political revolution, a great party, sustained by unrivaled genius and statesmanship, which carried it, for many years, through tangled theories and subtle details, commanding the respect and even the admiration of its enemies. Through all the vicissitudes of the Whig party, Mr. Spencer remained faithful to it. In 1838 it came into power in the State, and the Legislature of 1839 immediately appointed him secretary of state, in place of John A. Dix. In discharging the duties of this office, at a period when the duties were difficult and delicate, the talents of John C. Spencer shone out with much brilliancy. So successfully did he manage the concerns of the State, that his policy tended to increase his own popularity and give strength to his political friends.

In the autumn of 1837, he removed from Canandaigua to Albany, where he resided during the remainder of his life.

Mr. Spencer aided materially in the election of General Harrison. He stood foremost among the great party leaders, who guided the fortunes of the Whig party through that memorable campaign of 1840.

The death of Harrison occurred soon after entering on the duties of his administration, and John Tyler assumed the executive chair of the nation. Having been associated with Mr. Spencer in the Congress of 1819, when he presented to that body his memorable

report against the United States Bank, Mr. Tyler conceived the highest admiration for his abilities as a statesman. This admiration never abated; and on assuming the duties of president, Tyler invited Mr. Spencer to enter his cabinet as secretary of war. The invitation was accepted, and he continued to discharge the duties of that position, until a change in the cabinet rendered it necessary for him to assume the duties of secretary of the treasury.

At length the Whig party, under the guide of Mr. Clay, dissolved all connection with Tyler, but Spencer continued to adhere to the fortunes of the latter. "His extraordinary administrative abilities were invaluable to the incoherent and disorganized cabinet which Mr. Tyler, in his unexpected accession to the presidency, was compelled to rally around him."

He advocated the election of General Taylor, and at a later period, the election of General Scott. After the election of 1852 he never mingled in politics.

In the year 1849 he was appointed one of the codifying commissioners. The judiciary and the legal profession throughout the State warmly sanctioned this appointment, believing that, as one of the revisers of the statutes, he possessed peculiar qualifications for the duty of reducing the Code of Procedure to a practical and useful system; but, much to the regret of the public generally, he declined to accept the appointment, and retired to private life, the quiet of which was uninterrupted excepting when he emerged from it to enter the forum in defense of his venerable friend, Dr. Nott.

Mr. Spencer was characterized by a sound, cautious, discriminating judgment—by a singular patience and perseverance of thought, and by habits of the most fixed and concentrated attention to his own mental operations—endowments which, though not the most popular with the multitude, tended to enrich and to develop his mind.



As a lawyer his authority and influence at the bar and with the bench were unexampled. His success as a legislator and a statesman was great. "An insatiable activity of mind, a knowledge of the widest scope, and aptitude for public affairs, inherited, and indulged in from youth, and disciplined through manhood, rendered him so conscious of his fitness for public station as to close his thoughts to lesser considerations." As has been said of him by one who understood his character in all the relations of life, he took no belief on the credit of great names, or on the mere weight of authority. Subjects presented to him for decision were examined to the best of his ability; and his opinion once formed, it was almost impossible to change it. This element in his character made his prejudices; and they were few, but as strong as his opinions, and as difficult to overcome. Both he used aggressively as well as defensively; so that by men who were of different opinions, he was not regarded with the esteem which his abilities demanded. Thus, when he first went to Canandaigua his political principles differed from a majority of the residents of the village. Party feelings ran high, and twenty years afterwards the effect could be seen in the social relations between him and some of his neighbors.

Though his nature was self-reliant, it was generous. Beneath his cold exterior there existed a fountain of feeling and susceptibility, which those who were not thoroughly acquainted with him could not comprehend. Though so fortunate in his pecuniary affairs that he was never compelled to borrow money but once in his life, and that at the commencement of his professional career, yet when he closed his business affairs at Canandaigua, he burned some six thousand dollars' worth of notes representing money loaned to relieve the necessity of his friends.

In his person he was tall and somewhat slender. His features were prominent and striking, suggesting the idea of reflection rather than emotion. The lines



of his mouth were firm, and there was rather an aggressive poise of his head, while his whole appearance naturally impressed a stranger with his superiority; and therefore, in a large assemblage, even while perfectly silent, he always attracted attention.

As has been said, he was austere and severe, but his austerity and severity were reserved for the bar, for legislative halls—for the public. In his family, with his particular friends, where it was his delight, and one of the great rewards of his unremitting labor, to unbend, he was amiable, simple, natural, cheerful, kind and affectionate.

“Mr. Spencer was in every sense a lawyer. The important trusts which he discharged at different periods never permanently interfered with his professional pursuits. To these he always returned with fresh zeal and a vigor, renewed by efforts which would have exhausted others. Indeed, the impress of his professional character was left upon every office he filled. He made them all subservient to that profession, gathering knowledge from sources which many men would have neglected or despised. The pains of a disease which fastened upon him many years before his death did not cause him to suspend his labors. After retiring from his profession he worked on, chiefly in the peaceful retreat of his study, without complaining, seeming to think it was his duty as it was his pleasure, never to cease his labors while he had the strength to continue them.

“No person who knew Mr. Spencer well could fail to be impressed with his personal character and bearing. He despised everything small and mean, and admired, even in an adversary, whatever was noble and generous.”

To his efforts the Albany Hospital owes its existence, and, as has been said by another, “its interests and welfare never ceased to occupy his mind; and I have no doubt that his agency in its foundation was one of the richest consolations on his bed of death.”

The State Asylum for Idiots is another institution which owes much to his influence and generosity. He was one of the earliest and most effective members of its board of trustees ; and from the day of its foundation to the close of his life he took a deep interest in all that concerned it.

He was proud of his native State—of its history—of the great events of which it has been the theater ; and his career forms an important and deeply interesting part of its history.

Mr. Spencer died in the city of New York on the 20th day of May, 1854, in the sixty-eighth year of his age.

## JOHN BALDWIN.

Distinguished for his Wit, Humor, and Sarcasm.—Born at Lebanon, Connecticut.—Settled at Geneseo, New York.—Studied Law with Samuel Miles Hopkins.—Character of Hopkins.—Baldwin Admitted to the Bar.—His Marriage.—Commences Practice.—Loses his Property.—His Love of Anecdote.—Popularity with the Profession.—Remark of Vincent Matthews.—Removes to Hornellsville.—A Partner of Judge Hawley.—Hornellsville.—Baldwin's views of its Improvement.—Singular Contrast.—The Allegany Justice.—The Trial.—The Court against Baldwin.—Amusing Scene.—The Contempt of Court.—Is Sentenced to Jail.—The Friendly Inkstand.—The Escape.—The Pursuit.—The Defense.—A Formidable Weapon.—The Second Escape.—Baldwin Indicted for Libel.—The Arraignment.—Amusing Scene in the Court Room.—Singular manner of his Discharge.—Witty Retort to the District-Attorney.—Engaged in a Trial in the Allegany Common Pleas.—Judge Griffin.—His Sharp Remark to Baldwin.—The Bitter Reply.—Baldwin again in Contempt.—Proposes to Test the Question of Contempt by an Amusing Comparison.—The Sentence.—General Characteristics.

THE name of this eccentric and able lawyer will not soon be forgotten in the counties of Livingston, Allegany, and Steuben. His wit, his humor, his withering sarcasm, have created a fund of anecdotes almost inexhaustible. If sometimes his wit descended to vulgarity—if occasionally he wielded a tarnished weapon, we can excuse him when we remember that the native mold of his mind was above such perverted use of his intellectual powers. His vulgarisms were like the rubbish and offal which sometimes surround the polished and classic column, showing still the glory and the grandeur of a cultivated architecture.

He was born in Lebanon, in the State of Connecticut. While yet very young, Mr. Baldwin settled in Geneseo, intending to make that place his permanent residence. He had, on attaining his majority, received a competency from his father's estate, and possessed

the advantage of a good education. Soon after settling at Geneseo, he determined to enter the legal profession. At this time, the late Samuel Miles Hopkins, a distinguished lawyer residing at Moscow, Livingston county, invited Mr. Baldwin to enter his office as a student at law, an invitation which he readily accepted.

Mr. Hopkins was not only distinguished at the bar, but he ranked among the eminent orators of western New York. He was a gifted politician, and understood how to handle and manipulate those wires which are touched behind the scenes, and which demand the hand of a master to adjust them. Keen and subtle in his appreciation of the popular sentiment, he understood when and how to move in the political field—when to make a feint, and when to attack, the vulnerable points of the enemy being always known to him.

In the year 1813, he was a resident of Le Roy, New York, and represented the twenty-first Congressional district in the thirteenth Congress with marked ability. He was at this time, and through life, a warm and confidential friend of the late Thomas J. Oakley.

In the year 1821, he represented Genesee county in the Assembly, one of his colleagues being the late Jesse Hawley. He was elected to the State Senate in the year 1822, as one of the representatives from the then western Senatorial district.

Mr. Hopkins subsequently removed to Albany, where, as a lawyer, he took a very high position, distinguished for the force and weight of his arguments at the General Term and in the Court for the Correction of Errors.

Mr. Baldwin continued with Mr. Hopkins until called to the bar, then commenced practice at Moscow. If he did not meet with flattering success there, still his professional career was encouraging, and bid fair to be prosperous and pleasant. Soon after he was admitted to the bar, he married a Miss Sage, the daughter of a respectable citizen of Geneseo. In the midst of his

prosperity, through the failure of a brother, whose paper he had indorsed to a large amount, all the property which he possessed was suddenly swept away, and he was reduced to penury. He never again recovered his pecuniary standing.

His profession being now his only means of support, he entered more ardently and laboriously into the details of its practice, and soon rose to considerable eminence as a lawyer. He remained at Moscow but a year or two after his misfortune, having determined to make Dansville his future home. Here his professional labor was rewarded by a fair, if not lucrative practice. As his business at the bar increased, he became distinguished for his witty sayings, his sharp repartee, and his humorous speeches. At length such was his notoriety, that whenever it was known that Baldwin was to advocate a cause, the court room was crowded with persons drawn together by his fame, and it often occurred that the judge, jury, and audience were convulsed with laughter at some palpable hit which his unlucky antagonist received from him.

While at Dansville, his practice gradually extended into the counties of Allegany, Livingston, and Steuben. His good humor, his never failing fund of anecdotes, joined to his acknowledged professional ability, made him a favorite with his professional brethren and with the people. At this time the income from his profession rendered him independent. But Mr. Baldwin did not possess the faculty of accumulating. At that period the desire for making money had not become quite the all absorbing passion or mania that it now is. Like many of the most distinguished members of his profession, he possessed the ability to make money, but not of turning it to thrifty purposes. Vincent Matthews once said, "An impudent empty headed pettifogger will gain riches, while I grow poor, upon the same principle that a buzzard will fatten, where an eagle will starve. The one will wallow in, and eat carrion, offal, and all manner of unclean things; the



other will turn away in disgust, and seek an atmosphere where such filth never comes."

He remained at Dansville until some time during the year 1835, when he formed a copartnership with the late Honorable William M. Hawley, of Hornellsville, and removed to that village. This connection in business was attended by flattering circumstances, and gave Mr. Baldwin a gratifying assurance of the confidence he had inspired. The firm soon became distinguished for its ability, its fidelity to its clients, and for its success. As I have spoken of one of its members in another part of these sketches, suffice it to say here, that while it continued it had the entire confidence of the public. After his business relations with Judge Hawley were dissolved he continued to practice at Hornellsville, until some time in the year 1842, when he removed to Almond, at which place he resided until his decease, which took place in 1843.

While he was a resident of Hornellsville, that now thriving and beautiful village did not enjoy its present high reputation. Like most villages in a new country, it was infested by sharpers, tricksters, and roughs. The condition of society produced by such persons was not altogether agreeable to his taste, and he conceived a disgust for the place, which he often expressed in the most bitter language. It is related of him, that one morning while at breakfast with a large number of gentlemen at Elmira, where he was attending court, a lawyer at the table said,

"Well, Mr. Baldwin, how are matters at Hornellsville now?"

"Oh, about so so," he replied.

"I learn," continued the gentleman, "that matters are improving there very much indeed."

"Oh yes, they are improving; very rapidly, very, very. Why it has got to be almost as good as Hell, now," said Baldwin, with a gravity which exhibited the entire seriousness of the remark. It is needless

to add that all present were convulsed with laughter at the turn which he gave the conversation.

During his practice in Hornellsville, he was called upon to try an important case before a magistrate in the town of Birdsell, Allegany county. The plaintiff in the suit was the great man of that vicinity, and the justice was one of those trimming, slimy creatures who know how to creep into office by becoming the tool of men whom they regard as their superiors, and of course the influence of the plaintiff over the court was unbounded. And although the right of the case was entirely with Baldwin's client, yet there was but little hope for him in the suit. But, as he was not the man to submit without an effort, he used every means in his power, to convince the justice that he was right—but all to no purpose. He was deaf to everything but the interest of the plaintiff. At length, seeing that the game was up, Baldwin lost his patience, and poured upon the court the bitterest anathemas; perhaps never before or since, has a magistrate been subjected to such a complete excoriation. When he had finished, the lawyer on the other side arose, and informed the court that it was its duty to immediately commit Mr. Baldwin for contempt of court, for said he, "unless you do this, all respect for you as a magistrate will be at an end."

"Talk about respect for that thing," thundered Baldwin, pointing to the magistrate, "why, he acts more like a magpie peeping into a marrow bone, than a magistrate trying a law suit; the deeper he can get his head into a hole the better he feels."

This sealed the doom of the irate lawyer, and the magistrate informed him that he should commit him to the jail at Angelica, for twenty days, for a contempt.

"For a contempt upon whom?" asked the lawyer.

"Why, upon me," said the justice.

"A contempt upon you? the thing is impossible; the most contemptible thing in the universe would be

respectable compared with you. You are the dirty catspaw of the plaintiff here,—a burlesque upon justice. There is nothing but a skunk that could insult you, and even he would vomit when he got through with you," said Baldwin.

The justice commenced in earnest to draw the fearful paper, which was to incarcerate the lawyer in a gloomy dungeon. With the aid of the counsel opposed, who eagerly lent his services, the court made progress towards completing the instrument. The offending lawyer watched them with the most intense interest; as the paper gradually approached completion, and as the justice was about to place his name to it, Baldwin suddenly seized a large inkstand which stood on the table, nearly full of ink, and turned its contents over the dreaded instrument. In a moment, in the twinkling of an eye, it became a sheet of inky blackness, with every letter obliterated. Then calling for his horse, he mounted, and rode away, while the justice and the opposing lawyer commenced another paper. It was now nearly dark, and his only hope of escape was to reach the county line, between Steuben and Allegany counties. But between him and that haven of safety, lay twelve long, weary miles, and unfortunately for Mr. Baldwin, his horse was not a fleet and rapid steed, but on the contrary, was one of the slowest of his species, and slightly lame. In spite of the stern exigency of the case, the lawyer could make but slow progress over the devious route that lay before him. A bright autumnal moon shone down upon him, but all else was gloom and sadness. Visions of dreary dungeons, stern, hard-hearted turnkeys, and prison doors creaking harshly on rusty hinges, floated before his mind's eye. But as it would take a long time for the justice to make a new mittimus, he had strong hopes of escaping.

Onward and still onward he rode without interruption, until he came within a mile of the hoped for

goal, and he congratulated himself upon his escape. Just then his ear caught the clatter of horses' feet upon the ground, and, looking back he saw three horsemen rapidly approaching, whom he knew to be the constable and assistant, armed with the power to arrest him. Vainly he urged forward his weary and lame animal. Every moment his pursuers gained upon him, and he knew that before he could reach the line, he would be taken prisoner. But his fertile mind suggested another mode of escape.

Suddenly wheeling his horse, he faced his approaching enemies. As they rode up, he sternly demanded what they wanted.

"You are my prisoner," replied the constable, "and must go to Angelica with me;" and he attempted to make the arrest.

"Stand off," said Baldwin, "or I'll blow you through."

At the same time he drew from his pocket one of those old-fashioned, large brass inkstand cases used in those days, and presented it to the breast of the officer. The polished surface of the inkstand flashed in the moonbeams like the bright barrel of a pistol, and had a most murderous look. The constable and his assistants started back appalled at the hostile attitude assumed by the lawyer, the former crying out:

"Oh! don't point that this way; it may go off; take care!"

"Leave me, you villains, or by the heavens above us, I'll send a bullet through the very heart of some of you! Leave, I say;" and he gave the inkstand a shake, which caused it to click like the cocking of a pistol.

This was enough. The next moment his pursuers were galloping homeward as fast as their horses could carry them; and Baldwin went quietly home, thinking, as he afterwards said, that his protecting genius had assumed the shape of an inkstand.



Mr. Baldwin was once indicted in the county of Allegany for a very bitter, and, as was charged, libelous letter concerning this same magistrate. The letter was very lengthy, and written in such a manner that portions of it only could be read by any person except the writer of it. In drawing the indictment, the district-attorney attached the letter itself as a part of the instrument. When the offender was brought before the court, he was required to plead to the charges.

“Before entering my plea, I ask for the reading of the indictment,” said he.

In those days a prisoner could demand the reading of the whole indictment found against him, and in this case the court directed it to be read. The district-attorney commenced. While reading the usual or formal part of it he did very well, but when he attempted to read the letter itself he soon came to a full stop—studied a while upon it, and commenced again. After stumbling through a few sentences he was obliged to stop again. Turning to Baldwin, he asked if he would not have the politeness to waive the reading of the letter? but the latter declined, and the attorney made one more attempt to read, but soon came to another full stop.

“Will you not read that horrid, ill-spelt, illiterate and abusive letter, Mr. Baldwin?” asked the attorney for the people.

“No, sir; the letter is very legible—very indeed. If the good people of Allegany county have seen fit to elect a district-attorney that don’t know enough to read writing, why, I shall not help him along,” said the prisoner.

The official then losing all patience, began, in a strain of denunciatory eloquence, to abuse Baldwin, and concluded by saying, “that the annals of crime did not present such an awful, willful and terrible defamer of human character as is John Baldwin, the prisoner at the bar.”

As he closed this speech he took a drink of water



from a tumbler that was standing on the table before him. Baldwin, with great gravity, addressed the court as follows :

“May it please the court—in all the records of the past which I have been able to consult, I have never, until this moment, seen or heard of a *wind-mill going by water.*”

Peals and roars of laughter, even cheers, went up from all parts of the court room, and for once the vulnerable and brazen-faced district-attorney was silent—stricken through by the prisoner’s reply to his speech.

After silence was restored Baldwin again demanded the reading of the indictment. His opponent declared that it could not be read.

“Then, if the court please, I ask that it may be quashed,” said the prisoner.

After a few moments’ consultation the court directed that it should be quashed; and Baldwin walked from the prisoner’s box into the bar, amid the congratulations of his friends.

Mr. Baldwin was, in every sense of the word, an honest man. He never would consent that a case in his hands should be carried by dishonesty or perjury; and he once turned a profitable client out of his office for saying that he could prove anything that Baldwin wished to establish on the trial of a certain cause which the latter was conducting for him.

He was prompt to resent an insult, and was not particularly cautious in the manner of his resentment. He usually corrected all personal wrongs when they were inflicted, regardless of time or place or consequences.

He was once engaged in the trial of a cause in the Allegany Common Pleas, before Judge Griffin, then first judge of that county. The judge, though a man of excellent impulses, and a respectable judicial officer, was occasionally very violent and unreasonable towards counsel.

In the course of this trial, a question arose as to the admissibility of certain evidence offered by Baldwin. The trial had consumed much time, the counsel were tedious and technical—the judge was weary and his patience exhausted. In this state of things, the evidence was offered, and it was peremptorily rejected. Baldwin insisted that the judge had erred in his ruling, and proposed to produce authority on the point, to convince him of his error.

“Mr. Baldwin,” said the judge, “I have not sufficient confidence in your legal knowledge, to change my ruling for what you have to say.”

“I do not ask your honor to change your ruling on what I have to say; I simply ask your honor to be guided by the law, which is higher authority than either your honor or myself,” said Baldwin, “and I now propose to read from Starkie’s *Evi*—”

“Sit down, sir,” roared the judge, “you have trifled long enough with me; you hav’n’t sense enough to understand the law when you read it.”

All in the court house prepared for a scene, and it came.

“I shall obey your honor,” said Baldwin, with a look of half smothered anger lowering over his features; “and as to the compliment which your honor has paid me, I do not regard it as worth a straw, for, really, your honor is no more to be compared to a respectable judge, than a bullfrog is to an archangel.”

The scene that followed this retort can never be described, nor properly imagined. The face of the judge was pale with anger; for a few moments he sat without making any reply. At length he said:

“Mr. Baldwin, before the court proceeds to punish you for this infamous contempt, I will hear what you have to say.”

“Well, sir,” said Mr. Baldwin, not in the least intimidated, “I do not know but my remark may possibly be construed into a contempt; but, as I have

some doubts upon the subject, I propose to make it an issue of fact, and submit the matter to a trial. I propose that a constable be sent out with orders to capture a bullfrog and produce him here in court. Your honor shall produce the archangel; and if, upon a fair comparison, I am not fully sustained, I will submit, without a murmur, to any punishment this court may think proper to inflict upon me."

A roar of half suppressed laughter from the audience followed these remarks, which was quickly silenced by the officers.

As the judge was not inclined to accept Mr. Baldwin's proposition, he proceeded to pronounce his sentence upon the offending lawyer, which was ten days' imprisonment in the county jail, and a fine of twenty-five dollars.

The sentence, however, was modified, so far as the imprisonment was concerned, but the fine was paid.

Mr. Baldwin possessed a remarkable memory; and with those whom he considered his friends, he was a pleasing and an interesting companion. His taste for literature was improved by reading the most eminent among the ancient and modern authors. His large and varied experience at the bar, gave him a general acquaintance with the profession throughout western New York, with whom he was a favorite.

He was one of those persons whose faults lay on the exterior of his character, who never attempted to pass for anything better than he really was.

In the society in which he moved, he was an unassuming, but valuable member; and he was once the people's favorite lawyer—in times when men were less polished, less pretentious, but more sincere and direct than now.

## SAMUEL BEARDSLEY.

The Duke of Wellington's remark concerning Sir Robert Peel applied to Judge Beardsley.—Superior to Power and Influence.—Above Political Machinery.—His Relation to the History of the State.—His Parentage.—Birth and Education.—Historical Eras.—His Acquaintance with History.—How he Regarded the History of England.—Beardsley as a Teacher.—Commences the Study of Medicine.—Reasons for Abandoning the Study of Medicine, and Commencing the Study of Law.—Judge Hathaway.—Beardsley Commences his Legal Studies with him at Cherry Valley.—Commences the Practice of his Profession as a Partner of Hathaway.—His Character as a Lawyer.—Nathan Williams.—Beardsley Appointed District-Attorney of Oneida County.—The Oneida Bar.—Description of the Office of District-Attorney.—The Intricacy of the Criminal Law.—Anecdote.—Joshua Spencer.—The Sharp Law Point.—The Appeal.—Beardsley Elected a State Senator.—Draws for the Short Term.—Walter Bowne.—John Sudam.—Charles E. Dudley.—Singular Resolution Introduced into the Assembly.—Amusing and Witty Speech of a Member on the Resolution.—It is Passed and Rescinded.—Beardsley is Appointed United States District-Attorney.—Is Elected to Congress.—His Congressional Career.—The Statesmen who surrounded him.—Beardsley is Repeatedly Re-elected to Congress.—While in Congress, is Appointed a Circuit Judge.—Proposes to Accept.—Interview with General Jackson, Mr. Barry, and others.—Is Induced to Decline the Office of Circuit Judge.—His high Position in Congress.—His Strong Speech against the United States Bank.—Comments of the Press.—His Interesting Speech on the Questions of the Reporters for the Press.—Is Appointed Attorney-General.—Greene C. Bronson.—Beardsley's Third Appointment as a Prosecuting Officer.—Remarks of Daniel Cady.—Touching Anecdote Connected with Beardsley as a Prosecuting Officer.—Henry R. Storrs.—Expiration of Beardsley's Official Term.—His Desire for an Active Life.—Resumes the Practice of Law.—Appearance at the Bar.—Death and Character of Judge Cowen.—Mr. Beardsley Appointed to Succeed him.—Judge Beardsley Appointed Chief Justice.—Retires from the Bench on the Adoption of the Constitution of 1846.—His Predecessors.—Returns again to the Practice of the Law.—Description of his Practice.—Remarks of Judge Peckham on the Death of Judge Beardsley.—His Personal Appearance.—Social, Domestic, and Religious Character.

THE Duke of Wellington, prompted by blunt honesty, and clear knowledge of character, once said in the House of Lords, that in every action of his life, Sir Robert Peel, above every man he ever knew, was guided by a love of truth and justice. Without any

exaggeration, that remark may well be applied to the late Chief Justice Beardsley.

Superior to the fascinations of power, or the charms of wealth, he never employed his talents in self aggrandisement. It is remarkable, that the many distinguished positions of honor and trust occupied by him were spontaneously conferred, as the well earned reward of industry, ability, and undeviating honor.

Anxious to discharge with fidelity, the great and responsible duties which Providence assigned to him, he sought the right, regardless of expediency and her temporizing train; he cared little for the detail of political machinery, though a conspicuous and powerful supporter of the political principles which he adopted.

At once the profound jurist, the acute, ingenious, dexterous advocate, the eloquent parliamentarian, the dignified, learned, and impartial judge, he occupied a position in the State which few have attained. Indeed, the history of our State, without the character of Samuel Beardsley, would be wanting in one of its chief ornaments. In the language of an eminent judge, "His parents, though respectable, were poor, hence the son's capacity was not obscured, nor his mental growth retarded by pampered indulgence, nor by the want of strong incentive to action. He enjoyed what most parents through life strive to shield their sons from, *the benefits of early poverty.*" Accustomed to overcome the difficulties that surrounded his youth, in his manhood he entered the battle of life to become a conqueror.

Samuel Beardsley was born at Hoosic, in the county of Rensselaer, February 6th, 1790. His father was a farmer, who at an early period removed to the county of Otsego. Here Samuel attended the common schools in the neighborhood, and in the summer worked with his father on the farm. His mind was deeply imbued with the love of knowledge, and he sought every opportunity of acquiring it. His amusement and recreation were in his books. History he



studied as the great mirror that revealed human nature—its passions, its prejudices, its ambition, its virtues, its vices. It was to young Beardsley what Dionysius, of Halicarnassus, defined it, “philosophy teaching by example;” and by its examples and teachings it prepared him to enter the theater of life deeply read in the actions and career of mankind.

In general terms it may be said that the great chain of universal history is formed of three links; of which the first is Greece, the second, Rome, and the third, England, with her colonies; and in some respects it is difficult to assign a preference; but Mr. Beardsley regarded the history of our mother country as second to no other in importance. An intimate knowledge of it often enriched his efforts in legislative halls, at the bar, and on the bench. In a class of cases it exhibited itself with peculiar force in those admirable legal opinions which attest the wisdom of the old Supreme Court, and render its history imperishable.

For a while he was engaged in the occupation of a teacher—that occupation through which so many have advanced to fame and honor. At length he decided to enter the medical profession; and accordingly he commenced his studies with Dr. White, an eminent physician of Cherry Valley. While thus engaged it was his fortune to be present at several important trials which took place at Cooperstown. He watched with the deepest interest the contests of the forum. He kindled at the eloquence of the advocates, lost himself in their discussions of legal questions, and was enlivened by the keen wit, the terse sarcasm, the sharp retort of the legal gladiators before him; and thus the science of medicine and all the beautiful developments of anatomy lost their charms for him. His hopes and ambition were directed to the legal profession.

While attending one of these trials he made the acquaintance of Judge Hathaway, of Rome, New York, to whom he signified his desire to study law. Pleased with the intelligence and apparent ability of

the young man, the judge encouraged him in the undertaking, and invited him to commence his studies in his office. The invitation was accepted. He was then eighteen years of age. Fortunate in the choice of a preceptor eminent for his learning and skill, and one who became deeply interested in him, young Beardsley made rapid proficiency in his studies. He pursued them with great industry until the year 1813, when the war with England turned his attention to the life of a soldier. Enlisting into the army of his country, he was soon advanced to the rank of lieutenant; and on the northern frontier he was subjected to many of the privations and sufferings of war, without participating much in its pomp and circumstance. His term of service expired at the end of twelve months after his enlistment, and he returned, with renewed energy, to the study of his chosen profession, having won the reputation of a brave, competent and well-disciplined officer.

In October, 1815, he was admitted to the bar at Albany and commenced practice as the law partner of Judge Hathaway. The industry and energy of the student continued in the lawyer. In every matter of business, every question of law, finally, in all the details of practice, he was scrupulously correct. While at the bar, every case he conducted was thoroughly sifted, and all the doctrines of the common law and our own statutes, bearing a remote or close analogy to the point in controversy, were made tributary to the talents of the young advocate.

It was the happy and peculiar quality of young Beardsley, to excite the esteem and command the confidence of both court and jury.

“Method and order marked the preparation of his causes; hence his labor was effective. He never wandered on in confused uncertainty deceived by false analogy, but each step was the firm foundation for another. Like the approach of the scientific engineer towards a fortress, each day told the

progress of his work. Though no man whom nature has not well endowed, can, by any amount of exertion, ever become an eminent lawyer, so none, however gifted, can attain high distinction in that profession without great labor. He never addressed the fancy of his audience. Clear argumentation, and a bold indignant denunciation of wrong, were his chief weapons, and in his hands they were almost universally fatal to an undeserving adversary."

With such fortunate gifts, with such unwearied industry, it is not strange that his professional advancement should be rapid and brilliant.

In the month of February, 1821, the official term of Nathan Williams, then district-attorney of Oneida county, expired, and Mr. Beardsley was appointed in his place.

Mr. Williams was a learned and able lawyer, a strong and effective public prosecutor. The selection of young Beardsley as the successor of so distinguished a lawyer, was the surest evidence of the confidence of the public in his ability and talents.

In April, 1823, Mr. Williams was appointed by Governor Yates, a circuit judge of the State. His learning, ability, candor, and courteous demeanor, rendered him a favorite with the profession.

Since its organization, the Oneida bar has been second to no other in the State; upon its roll appear the names of every variety of intellectual talent—many of them the master spirits of their times—those who could kindle with the enthusiasm of poetry and eloquence, who were endowed with the faculty of combining pleasing and beautiful images with the fancy which animates them—those whose power of abstract reasoning established the distinction between empirical and *a priori* deductions; whose knowledge of the law, and capability of methodical argument, divorced from fancy, rendered them powerful where questions of law alone were discussed,—those whose acquaintance with precedent, whose perceptions of

the cardinal points of a case, and whose reflective powers gave them high judicial abilities; and those whose administrative faculties qualified them for the career of the legislator and statesman.

The office of district-attorney at such a bar was calculated to stimulate all the latent powers of Mr. Beardsley's mind, awaken all his energies, and arouse his genius. For, after all, genius is nothing but the intellectual power or skill that is acquired by the concentration of the mind on a single pursuit.

The whole system of our law was then in its practical condition, one of technicalities; while the courts in the administration of criminal law, were scrupulously strict in adhering to forms and rigorous rules. They required of the public prosecutor the most exact conformity to precedent; adhering rigidly to the principle, that it is the right, even of the guilty, to be tried according to known and established rules, that it is an evil of less magnitude for a criminal to escape, than that the barriers erected for the security of innocence be overthrown. Thus the prosecuting officer was obliged to walk, as it were, over mines which the touch of some skillful antagonist might suddenly explode; and he was, therefore, compelled to examine every point, every question which arose, with laborious application.

This state of things produced its benefits in the case of Mr. Beardsley. It led to that emulation, to that struggle for success, and to that progressive improvement, which rendered him equal to the duties of his office, and his patient investigation, his careful preparation, shielded him from motions to quash his indictments, motions in arrest of judgments, and all those attacks from keen and learned lawyers, which the public prosecutor is so often called upon to resist.

On one occasion, in drawing an indictment for arson in the first degree, he omitted an allegation, which the lawyer defending believed to be fatal; but



having some doubt, he consulted Joshua A. Spencer on the point. That sagacious lawyer, after examining it some time, replied :

“ Well, I think, though Archbold and Chitty both may sustain you, yet if Beardsley insists that he is correct, I should prefer his opinion to theirs.”

The lawyer, however, made his motion to quash the indictment. A long and interesting argument followed ; but Beardsley's knowledge of the criminal law gave him a decided advantage. Foster, Hale, Archbold, Chitty, and the American authorities were as familiar to him as the school-boy's every-day lesson, and he sustained his indictment. Exceptions were taken to the ruling of the court, and the case was removed to the General Term, by a *certiorari*, where Beardsley was again sustained.

Many instances of this nature occurred during his official term, which often brought him before the court in banc, giving him an acquaintance with judges and the bar throughout the State. He continued to discharge the duties of district-attorney until October, 1825, when his term of office expired, and Hiram Denio, an eminent member of the Utica bar, succeeded him.

In the autumn of 1822 Mr. Beardsley was elected a senator from the then fifth Senatorial district. As the State Senate was then classed by lot, Mr. Beardsley fell into that class whose term of service was limited to one year.

In the language of Judge Denio, “ he had never before belonged to a legislative body, and was the youngest member of the Senate ; but, although he was the youngest, he was by far the most efficient. Though it was not then generally acknowledged, he possessed intellectual powers of the highest order, which, as a member of Congress and at the bar of our superior courts, he has demonstrated to the entire satisfaction of the public. As a member of the Senate he was perfectly honest in his political opinions, but



he was a partizan of the most decided stamp. At the same time it is proper to say that he was kind, courteous and friendly to all with whom he associated, of whatever sect or party."

Among the members of this Senate were Walter Bowne, John Sudam, Heman J. Redfield, Jacob Sutherland and Charles E. Dudley. Mr. Bowne was a lawyer from Cooperstown, for many years eminent at the bar and distinguished in the political history of the State. Mr. Sudam was from Kingston, Ulster county, and an advocate of the highest ability. It would not be easy to point out a legal orator whose triumphs at the bar were more brilliant than were those of this eminent personage. In the fluency of his expression, in the pungency of his sarcasm, in his vivid flashes of thought and the quickness of insight with which he seized and developed deeper truths, he resembled the great Irish orator, Grattan. With little taste for politics, he was yet much in the political field. Such were his abilities and usefulness to his party, that he was often compelled by his friends to enter the political arena in opposition to his own inclinations. In the Senate of 1823 he became a friend of Mr. Beardsley, from recognizing in him those traits of character which he admired.

The Senate, at the period when Mr. Beardsley first took his seat in it, was a body of no ordinary intellectual power.

Early in the legislative session of 1823 a singular resolution was offered in the Assembly by Mr. Morse, a member from New York, which was adopted, and was as follows :

"*Resolved* (if the honorable the Senate concur herein), That the practice of addressing the governor by the title of "his excellency," and in the Senate and Assembly, the members and officers thereof by the title of "honorable," be discontinued and abolished, as incompatible with the republican form and principles of the Constitution."

The discussion of this resolution was deeply interesting, and elicited many witty and sarcastic speeches.

“Why, sir,” said a member from one of the western counties, “the prefix of Hon. to a man’s name has become so common, that it is infinitely worse than the gregarious peerage which Lord Bacon complained of. The flock of honorables in this country, is fearfully on the increase. If the title continues to be thus liberally used, it will bring with it dim recollections of the whipping-post—legendary ideas of those brands and distinctive marks, which of old, were sometimes affixed in the hollow of the hand, or on the side of the face, as index of the singular ability which the individual thus distinguished had for appropriating other people’s property to his own use.

“Sir, this prefix has become the distinctive feature of contemptibility struggling for consideration—the inflating principle of nothingness—the intensified idea of merited contempt. Why, sir, to look over the newspapers of the day, one might be led to the belief, that every four corners, every little village, was inhabited solely by great men, who, like Charles V., had resigned power and place from deliberate choice, to enjoy the tranquillity of retirement, were it not for their croakings in conventions, public assemblies, and here in the Legislature of our great State. We shall soon hear of the Hon. John Straight Jacket, just from Auburn Prison; the Hon. Abner Sinbad, from Botany Bay, and the Hon. Peter Funk, from anywhere and everywhere.”

The next day, however, the resolution was reconsidered and expunged. So jealous were the legislators of that day of their titles and distinction.

While yet a member of the State Senate, Mr. Beardsley was appointed by President John Quincy Adams, United States district-attorney for the northern district of New York. This appointment gave great satisfaction to the bar, as well as to the judiciary of the State. His experience as the prosecuting officer

of Oneida county, had prepared him to discharge the duties now assigned to him with distinguished ability. He continued to hold the office until November, 1830, when he was elected a representative in Congress from the fourteenth Congressional district, by the Democrats. He entered Congress on the fifth day of December, 1832.

General Jackson was then president, and Andrew Stevenson, of Virginia, was speaker of the House, but after the expiration of a few months he resigned, and John Bell, of Tennessee, was chosen in his place. Mr. Beardsley was honored by the second position on the Judiciary Committee, an evidence of his high standing with his party. In all the exciting questions of that Congress, he was the uncompromising friend of President Jackson, and was regarded by him, as one of his ablest supporters in the House.

His leading principles of political policy were simple, uniform, and firm. He believed that the existence of a moneyed institution like the United States Bank, in a government like ours, was at war with the principles upon which it was founded; "that the Bank had set itself up as a great irresponsible rival power of the government, assuming to regulate the finances of the country, and to control the whole policy of government, in the regulation of the financial concerns of the nation; that it assumed in effect, to dictate to the country, how its government should be administered, and that the question was, whether we shall have the Republic without the Bank, or the Bank without the Republic."

The terrifying apprehensions entertained at that time, of dangers on the one hand, from alleged assumption of power, on the part of the Bank, and on the other hand, the dangers from the encroachments of the executive, in assuming powers and authority which the Constitution did not warrant, afforded a field for argument and discussion, hardly equaled in any period of the nation. The great statesmen and

legislators who participated in that discussion, have had no equal in any age of the world. Neither the Phillipic orations of Demosthenes, nor the consular ones of Cicero, nor in whatever class the speeches of the elder and the younger Pitt may be placed, contain higher exertions of great and original genius, than did the speeches made in Congress during the administration of Andrew Jackson.

And now there are fewer sources of profitable intellectual gratification and instruction, than is afforded by the study of the legislative speeches and documents of that period; they enable us to bring the past under our immediate inspection, and to look calmly back upon the plans, the deliberations, the contests of short-sighted and arrogant mortals, beholding them gravely speculating upon probabilities never to be realized, elated with hopes, or depressed with fears, in most cases groundless and empty; agitated by passions so soon to pass away forever. But as eternal vigilance is the price of liberty, these things are all rightly adjusted by Him who holds the nation as in a balance.

Mr. Beardsley was elected to Congress for three successive terms, thus occupying a seat in the councils of the nation six successive years; during which time he adhered to the administration and supported with great ability the public measures of Andrew Jackson.

The following circumstance illustrates the esteem in which he was held by the president. In January, 1834, while Mr. Beardsley was in Congress, Nathan Williams, a judge of the fifth circuit, became disqualified by reason of his age, and he therefore resigned. Governor Marcy immediately nominated Mr. Beardsley as his successor, and the Senate promptly confirmed the nomination. As soon as this intelligence reached Washington, Mr. Beardsley signified his intention to resign his seat in Congress. General Jackson, who was soon apprized of this, sent for him. On his



arrival at the White House he found several members of the Cabinet and some of the most eminent gentlemen from both branches of Congress in attendance. Supposing that it was a meeting called for some party consultation, Mr. Beardsley took his seat.

“Mr. Beardsley,” said the president, “we have understood that you are intending to resign your seat in the House; is this so?”

“It is; I have received an appointment under the government of my State, which, under all the circumstances, I do not feel at liberty to disregard,” said Mr. Beardsley.

“Well, Mr. Beardsley, we have requested your presence here for the purpose of urging you to do that very thing. To be frank with you, such a step at this period would be a serious injury to the administration.”

“I am not aware in what particular,” was the reply.

“You occupy a place in the House, Mr. Beardsley, which no other man can fill, and I am confident that your devotion to the interests of the nation will, in view of this, prompt you to remain at your post in Congress,” said Mr. Barry, then postmaster-general.

Other gentlemen present urged him to remain, and he at length consented. That very day the northern mail which left Washington carried a letter to Mr. Marcy from Beardsley, in which he gave his reasons for declining the high position to which he had been appointed.

No circumstance in the Congressional life of Mr. Beardsley more strongly illustrates his high character and his eminent abilities than this. It will, therefore, not be invidious to remark, that amid the gifted and the great by whom he was surrounded, he was distinguished for the depth of his knowledge and the solidity of his reasoning, but more than all by the inflexibility of his principles.

Although, as has been stated, he was firm and in-



flexible in his political opinions, in maintaining them he dealt little in those caustic attacks which rankle in the breast of opponents.

Once or twice in his Congressional career he indulged in language that bordered on extravagance. In April, 1834, his first year in Congress, he delivered a speech of remarkable power on the currency question, in the course of which he said: "Sooner than extend the existence of the Bank of the United States, let it perish, and in its fall carry down every bank in the Union. I say, for one, perish credit, perish commerce, perish the State institutions. Give us a broken, decayed, worthless currency, rather than the ignoble and corrupt tyranny of an irresponsible corporation."

*Niles' Register*, a strong and powerful advocate of the Bank, after speaking in terms of commendation of the ability displayed in this speech, refers to the above remark as follows: "Such sentiments, coming from a man of Mr. Beardsley's poise, ability and moderation, must have a dangerous influence."

Though not distinguished for rare conversational powers, he could charm, with his tersely-told anecdotes, "with his cordial kindness and his genial humor." In the refined social circles of Washington he was always a favorite; and, as a lady distinguished for her brilliant assemblies, for the wit, eloquence, learning and elegance of her guests, once remarked, "Without Mr. Beardsley at my levees, there seems to be something wanting."

In January, 1834, Mr. Hall, from North Carolina, who had taken umbrage at certain statements made by one of the reporters of the House, concerning the proceedings in a debate in which he had taken part, made an effort to restrain the reporters in their comments upon the proceedings in the House. He was sustained by several other members, and a lively discussion took place.

Mr. Hall and his friends insisted that "frequently, the grossest injustice was done to the members of

Congress, to cabinet ministers, and the administration itself, by the unrestrained liberty, which these representatives of the press enjoyed, in publishing their own views, and in putting their own constructions upon the proceedings in that body, and elsewhere, and therefore, it is proper that certain healthy rules be established regulating the publication of our proceedings.”

Mr. Beardsley opposed the adoption of any such rules, or of placing any restraint whatever upon the press, or its representatives in the House. He delivered a speech on the subject which clearly evinced his enlightened liberality, and the justness of his views on the subject. In the course of his remarks he said :

“I am one of those, sir, who favor the entire and perfect liberty of the press on all subjects connected with the government, and in all public matters, and in all places ; we have passed the period when that great dispenser of intellectual light and truth shall be circumscribed or hampered, except in its obedience and subjection to healthy laws provided for the protection of character against its wanton and malicious attacks.

“I am free to confess, there should be some amelioration of those laws, at least in some of the States. Sir, jurors are now too frequently called upon to pronounce whether a person innocently or maliciously published that a man’s father was hanged. Can any one doubt that a person has a right to publish this fact, provided the man really was hanged ? Can it be possible that a minister of state, a member of this, or the upper House, a public officer of any kind, who, in the face of day, commits the grossest injustice, or whose incapacity has been testified by the most notorious blunders, may unblushingly avow his wrongs, or his incapacity, and punish whoever conscientiously and calmly states it to the country ? Some persons affect to see great danger to the peace

of community, in an unlimited publication of the discussion of public measures. 'My government and my policy,' said Cromwell, 'are not worth preserving if they cannot stand against paper shot.' That sagacious man never objected to the liberty of the press in any form, and yet history calls him a usurper.

"To hamper the press may serve the purpose of weak, vacillating, erroneous rulers, may favor weak, timid, and time-serving politicians, but the enlightened high-minded statesman will rejoice in its unlimited liberty. Sir, what is there so very captivating in error—what so fascinating in excessive violence—what so attractive in gross and palpable injustice, as to make those tremble who stand firm in the consciousness of being right? Surely truth and sense have at least an equal chance in the contest.

"Then let the press, let every one in this country speak out, comment upon, discuss, describe, and explain all public measures; let the representatives of the press have free access to all public assemblies, and particularly to all parliamentary bodies; let them criticise, scan, condemn, or approve as they please; for in this way light and truth are disseminated; in this way, bold, bad men are rebuked, error exposed, and virtue vindicated; those alone have cause to tremble, who are guilty of wrong, or who are manifestly weak and incapacitated for the place they occupy. In the language of another, a people from whom public measures are concealed, are sure to be easily disquieted; every breath makes them start; all objects appear in false shapes; anxiety and alarm spread rapidly without a cause; and a parliamentary body, the law-making institution of the nation, weakened by delusions which have sprung from unnecessary concealment."

Such was the language, such the fearless utterances of Samuel Beardsley, thirty-six years ago, on the restrictions of the press.

Whoever has examined the opinions delivered by

him as a justice of the Supreme Court, in the various cases of libel which, before the Code, came before that tribunal for adjudication, has observed the learning, research, and liberality with which he discussed the intricate question of the right to give the truth in evidence in cases of libel and slander; especially in those instances where he refers to the conflicting *dicta* in the cases of the King *v.* Draper, and Finerty, which involved the consideration of this question.

Early in January, 1836, a vacancy occurred on the bench of the Supreme Court by the resignation of Mr. Justice Sutherland. Greene C. Bronson, then attorney-general, was appointed in his place, and Samuel Beardsley was immediately appointed attorney-general. That office was, at this time, one of great labor and responsibility. There was an unusual amount of criminal business, while the civil business of the State, at this period, required the exercise of the ablest legal talents. It was fortunate for the State that the governor selected a man so well qualified for the office, as was Mr. Beardsley.

This was the third time he had occupied the position of a prosecuting officer for the people, and the experience he thus gained, was of great advantage to him, rendering him capable of disposing of a large amount of business with facility and dispatch.

A distinguished crown lawyer of England was once asked by one of his fellow students, then just beginning to emerge from obscurity, how he managed to dispose of such an accumulation of business?

“Some I do, some does itself, and the rest is undone,” was the reply.

No part of the public business intrusted to Mr. Beardsley was left undone, or left to do itself; his great industry and untiring adherence to all the details of his office, once elicited from Daniel Cady, the following compliment:

“Beardsley,” said that eminent man one day, at the conclusion of a long and tedious suit, in which



the attorney-general had labored with incessant energy, "your manner of conducting the public business, reminds me of the remark made by Peter de Blois to Edward II.: 'Your majesty's justicia,' said Blois, 'tries causes so that neither gifts nor partiality are admitted; all things proceed sure and certain, with great rapidity, and yet according to law.'"

"But the remark of Blois referred to the court, and not to the crown lawyer; and in this case it is far more applicable to the court than to the attorney-general," said Beardsley.

"I applied it to both, in this instance," was the reply.

In the discharge of his duties as a public prosecutor, while he was inflexible in his determination to convict those whom he really believed to be guilty, he did not forget that the iron hand of the law was often laid upon the really innocent—those who had no means of rendering their innocence apparent, being involved in the meshes of circumstances which they could not control or explain. When Samuel Beardsley was once convinced that such a case as this really existed, he believed it was as much his duty to shield the person from an unjust conviction, as it was to urge the conviction of a really guilty party.

While district-attorney of Oneida county, a circumstance of this nature occurred, which exhibited the generous impulses of his mind, and his love of the right.

In the winter of 1824 there lived, some six miles from Boonville, in the county of Oneida, a man by the name of Tener, whose family consisted of himself, wife and an only son, a young man about eighteen years of age. They were respectable, though very poor, and had once been in more fortunate circumstances. Therefore, the hand of poverty fell heavier upon them.

One bitter cold and stormy day the father started on foot for Boonville to procure some necessaries for



the family. As the day wore away the cold and wind increased, piling the snow into great drifts, and in places obstructing the road. Night came on gloomy, dark and boisterous, but still he did not return, though he had long been expected by his anxious wife and son, who listened to the howling storm, expecting every moment to hear the footsteps of the returning father; but he did not come. Hour after hour passed away, and still they watched in vain for him. At length anxiety gave way to the most dreadful apprehensions, and in imagination they beheld him as he wandered on

“ From hill to dale still more and more astray,  
Impatient flouncing through the drifted heaps,  
Stung with the thoughts of home.”

Often, as some terrible sweep of the wind went shrieking by their humble dwelling, they fancied cries for help. No pen can describe the terrible anxiety of that hour. The son could endure it no longer, and he was determined to rescue his father, who he now believed was perishing in the snow.

Near his house there was a barn belonging to a thrifty farmer—a harsh, selfish and grasping man—who, for some reason, was a bitter enemy of Tener. The young man knew that in the stable to the barn there were several horses, and that it was never locked. Thinking of nothing but the safety of his father, he hastened to the stable, led out one of the horses, and with nothing but a halter to guide him, mounted him and took the road to Boonville, anxiously watching for his father, whom he expected to find struggling in the snow; but, as he did not discover him, he rode on until he reached the village. Here he learned that his father was at the house of an acquaintance near the village, having started home and been driven back by the storm.

Soon after the young man left the stable the farmer discovered that his horse was missing; and mounting

another, he followed young Tener to the village, reaching it just as he had started to return. Taking the animal from the young man, he immediately procured a warrant, charging him with burglary and grand larceny.

In the morning he was conducted before a magistrate, examined, and held to answer for those dreadful crimes. A kind friend consented to bail him, and the young man, in company with his father, returned home. In due time he was indicted by the grand jury, and a gloomy fate seemed to await him.

The late Henry R. Storrs, then one of the ablest advocates at the bar—a man of strong sympathy and generous emotions,—believing the story of the young man, consented to undertake his defense, though he had little hope of success. He studied the case in all its aspects, but saw no ray of hope. The proof was positive that he entered the barn in the night time, took the horse, rode it away, was found with it in his possession, six miles from home. Neither the entreaties of the father nor the agonized pleadings of the mother touched the heart of the relentless farmer.

“Such crimes must be punished for the good of the people,” was all the answer he would make.

In this emergency Mr. Storrs advised his client to put Mr. Beardsley in possession of all the circumstances of the case. Accordingly, Storrs himself called on Beardsley, obtained his consent to meet the parents and their son, and hear their story. He listened to the mother as she related the circumstances in all the eloquence of maternal truthfulness. The scene of the terrible night was depicted with faithful earnestness, but with no exaggeration. Her words alone convinced him that there was no intended larceny, no design to steal the horse; that the whole act was the result of the poor boy's intense anxiety for the safety of his father. This belief, joined to the irreproachable character of the family, rendered him conscious that duty did not require him to enforce the law against him.

Soon after this the Oneida Oyer and Terminer commenced its session, Honorable Samuel R. Betts presiding. As soon as the court was organized for business, Mr. Beardsley arose, and in a few but well-timed words stated to the judge the case of young Tener, concluding by saying that he felt confident that there was no crime intended on the part of the accused, and asked the court for leave to enter a *nolle prosequi* to the indictment. After consulting with the Honorable Norris Miller, then first judge of Oneida county, Judge Betts said :

“Mr. Beardsley, the court regards this as a singular circumstance. Your own character, however, is a sufficient guaranty for the court to grant your request.”

Whereupon, young Tener was discharged.

Mr. Beardsley's official term expired on the last day of December, 1838, and he was succeeded by Willis Hall. Thus, after an active public career of nearly thirty-six years, he retired to private life. But he had so long been an ardent actor in the great drama of politics, that he could not remain inactive. Besides, he understood the “effect of inactivity upon the physical structure and energies ; that rust is more fatal to metal than wear.

“The temper and intellect of man, secluded from the scenes of appropriate stimulus and exercise, become relaxed and weakened. What would have become of Achilles, if his days had all melted away in the tender, delicate, emasculating inactivity and indulgence of the court of Lycomedes ? The language of the ancient orator concerning his art may be applied to life, that not only its greatness but its enjoyment consists in *action*, ACTION. The feelings, for instance, may become so morbidly sensitive as to give an appearance of weakness to the whole character ; and this is likely to be specially the case of one with feelings of superior liveliness and deli-

cacy, if he moves only in the haunts of silent, profound abstraction and contemplation—in those refined regions which may be termed a sort of paradise, where every conceivable source of enjoyment is cultivated for the fortunate and fastidious occupants, to the very uttermost, and all those things which fret, worry and harass the temper, the head and the heart of the dwellers in the rude regions of ordinary life, most anxiously weeded out, instead of entering into the throng of life, and taking part in its constant cares and conflicts—scenes which require all his energies to be always in exercise to keep his place and escape being trodden under foot. The man who feels a tendency to shrink from collision with his fellows, to run away, with distaste or apprehension, from the great practical business of life, does not enjoy complete moral or intellectual health—will quickly contract a silly conceit and fastidiousness, or sink into imbecility and misanthropy.”

Nothing of this kind was allowed to affect the mind, or impair the intellect of Mr. Beardsley. As soon as he was relieved from the cares of office, he resumed the practice of a profession which he loved too well to abandon; and in a very short time he found himself in the midst of a large and prosperous business. It was, however, confined to the General Term, and to the Court for the Correction of Errors, although he occasionally appeared at the Circuit.

In his appearance at the bar, he resembled John C. Spencer, though his imagination was not so entirely cold and colorless as that of Mr. Spencer, and therefore he exhibited considerable enthusiasm in conducting an argument, and in trying a cause before a jury.

Early in February, 1844, the judiciary, the bar, and the State, sustained an almost irreparable loss by the death of the excellent and learned Esek Cowen, then one of the justices of the Supreme Court of the State. His vast legal knowledge, his intimate acquaintance with precedent, his wonderfully retentive memory, his



unceasing industry, his love of research, gave him the reputation of being one of the most erudite judges in the nation. His legal opinions are the trophies—the imperishable monuments of his great judicial powers; they have been criticised for their length, their prolixity, and their discursiveness, but those faults, if indeed they can be considered faults, are the result of his great profundity. It caused him to trace every principle of law to its fountain head—to describe every variation and restriction in its course, modifying or neutralizing its force and meaning. All precedent, whether English, French or American, was as familiar to him as the simplest elemental principles. So systematically were they arranged, in the vast storehouse of his memory, that he could lay his hand as easily upon the most remote or ancient adjudicated principle, as he could upon that which had just been pronounced, selecting the casual dictum which accompanied them from the real question decided, with the most remarkable precision.

His application of the doctrine of recoupment to a class of actions sounding in damages, was but one of the many offsprings of his intuitive legal mind. In many respects, he was to the American bar what Mansfield was to the English. Like Mansfield, in preparing his legal opinions, he was accustomed to a liberal expenditure of mental capital, an excess of intellectual labor, which rendered them firm and solid in texture—fabrics elaborately finished, exhibiting the triumphs of a great intellect; while they simplified the nice technicalities and distinctions of the ancient common law, adapting it to the necessities of an enlightened age and a commercial people.

The lawyer, the student, the scholar, those who love the learning of the bar, those who admire judicious and philosophic arguments, and possess the industry to seek for them, will find in the opinions of Judge Cowen, legal Golcondas glowing with richest gems of erudition.



On the death of Judge Cowen, Governor Wright appointed Mr. Beardsley in his place. Perhaps no man in the State was better qualified for the position than he. Independent of that ability and cast of character which qualified him for the various high positions which he had occupied, he was remarkably adapted for a judicial position. His habits of patient and impartial investigation, his accurate judgment and quick perception, seemed to have formed him by nature for a judge, and he rose with great rapidity in public opinion, and in the estimation of the bar, and his brethren of the bench. In his inquiry after truth he was patient, diligent and laborious; often revising his own opinions, communicating to his brethren his conclusions, and reasoning with freedom; listening candidly to theirs, emancipating himself from all pride of opinion, ready to yield his own to more apparent truths.

The decisions pronounced by him from the bench of the Supreme Court, are the best history of his judicial life. They bear the impress of his mind, and his positions are modestly yet firmly taken, and fortified by that judicial erudition which raised him to the front rank of his profession.

He occupied his seat upon the bench until the old Supreme Court passed away before the innovations made by the convention of 1846.

On the retirement of Chief Justice Bronson from the bench in June, 1847, Judge Beardsley succeeded him, and as John Jay was the first chief justice of the old Supreme Court, so Samuel Beardsley was the last. The office existed from the 8th day of May, 1777, until January 1st, 1848, and a long line of distinguished names embellished its record—names which lose nothing when compared with those great judges who have appeared on the page of England's judicial history. Had they faults? Doubtless, for they were human. But the biographer of men, who through a succession of years occupied a judicial position, and

who with each passing year constantly increased in the esteem and confidence of the public, can find few if any faults that are worth to be recorded. They may have had the passions, the prejudices, the cupidity and jealousy of others, but they must have held them in control while in the discharge of their high functions.

Judge Beardsley, after retiring from the bench as chief justice of the Supreme Court, though not engaged in as many cases as some others, was counsel in nearly all of the most important cases in the Court of Appeals—causes involving from thousands to millions of dollars. In speaking of his ability, the late Nicholas Hill once said: "I had been retained as counsel in a very important cause, with the liberty of choosing my colleague from the ablest in the country, and without hesitation I selected Judge Beardsley."

In the elegant language of an eminent judicial officer of the State—Judge R. W. Peckham, "Judge Beardsley knew men and the springs of human action; he was able to inspire them with a portion of the same spirit that fired his own bosom. He had really more of the General Jackson in him than any of the public men that survived the old hero."

Eminent as he was in ability, he was not less distinguished for the high toned, manly integrity that characterized every act of his life. To say that he was honest, conveys no adequate conception. Fidelity and truth were in every element of his nature. Many lawyers deem it entirely admissible, in preparing amendments to bills of exceptions, to speculate upon the forgetfulness, the possible partiality or fear of appearing ridiculous, of the judge who tried the cause. Judge Beardsley was not of that number. The late Joshua A. Spencer, who had practiced law in the same town with him for a quarter of a century, in alluding to the chivalrous integrity of Judge Beardsley, observed to me that he never felt called upon to examine with much care bills of exceptions or amend-

ments from him, as he knew they were always prepared with a scrupulous regard for the truth of the case, as it occurred on the trial. Nor was he in the habit, on the argument of cases, of expressing his own opinion to the court as to the merits of his cause. He chose to prove the case in the legitimate model of authority and argument. . . . .  
 Though a candidate at various times for popular favor, in fact a public man, he never sought popularity by changing in the slightest degree from that urbane dignity and manly mien, the opposite of that of a demagogue, that always marked his carriage. He never could sink down into the sycophant—there was nothing of servility, nothing of hypocrisy, nothing of sham in the man. A delicate modesty always shone with peculiar grace upon the hardier features of his character.”

Judge Beardsley died at Utica on the 7th day of May, 1860. He continued at the bar until a short time before his death. Two weeks before that event, he appeared in the Court of Appeals, and in a case involving many intricate questions, made an argument to which the bench and the bar listened with pleasure and profit.

In person he was tall and commanding; there was that in his presence which evinced superiority; and yet there was no repelling or chilling reserve in his manner. His features indicated thought, intellect and firmness, while his high forehead developed high moral and reflective faculties. On the bench, he was dignified and courteous; his manner of listening to an argument elicited the confidence of the speaker, and drew from him all that he desired the court to understand.

“In private life, he was social and hospitable, in his family kind and tender; no man enjoyed the society of his friends so perfectly as he did. ‘Having completed the business of the day, it was peculiarly grateful to him to meet them in the confidence of

private friendship, and then he was a most pleasing companion.' But he was 'lofty and sour to those who loved him not,' and to his enemies, those few, who in life, crossed his path in hatred, he was implacable—sometimes aggressive in his resentment—he knew how to be a turbulent and persistent hater."

He was a firm believer in the Christian religion, unostentatiously devoted to the observance of its worship. He had little respect for loud and stormy professions of religion, believing that deep and ardent piety, while it is intended to act powerfully on our whole nature—on the heart as well as on the understanding and the conscience, is generally noiseless and seeks no display.

If there is one among all the great judges who have adorned the bench and bar of New York, to whose memory the language of eulogy and even panegyric is due, it is that of SAMUEL BEARDSLEY.

## WILLIAM L. MARCY.

Birth and Parentage.—Enters Leicester Academy in the midst of the Excitement between Jefferson and the Federalists.—Mr. Adams, the Principal, a Strong Federalist.—Young Marcy an Admirer of Jefferson.—The Debating Club.—Jefferson Attacked in it.—Marcy Defends him.—Reasons for Jefferson's Popularity.—Interview between Dr. Adams and Marcy.—The former Demands that Marcy shall Cease Defending Jefferson in the Debating Society.—Respectful but firm Answer of Marcy.—The Expulsion.—Returns to his Parents.—Is Commended for his Firmness by them.—Enters College.—Graduates.—Removes to Troy, and Commences the Study of Law.—Admitted to the Bar.—His Professional Progress not Flattering.—Continues to Study.—Slow increase of Business.—War with England.—Marcy Second in Command of the Troy Light Infantry.—Tenders that Company to Governor Tompkins.—Is accepted.—The Company in active Service at French Mills.—Marcy assigned to lead the Attack on Fort Saint Regis.—The March.—The Sentinels.—The Attack.—The Contest, and the Victory.—The Trophies and the Prisoners.—General Dearborn.—Marcy's Company Attached to Colonel Pike's Regiment.—Colonel Pike Attacks the works of the British at Le Colle.—Marcy's Company Attacks the Indians with Slaughter.—Repulse of Pike.—Marcy's Time of Service Expires, and he Returns to his Profession.—Finds his Clients Scattered.—His Want of Professional Industry.—His Personal Appearance at this Period.—The Troy Female Seminary.—Mr. Marcy and the Ladies.—Marcy and the Heiress.—His Friendship for her.—No Romance in the case.—Is Reported to Faculty as Paying his Address to her.—The Elopement.—The Excitement.—The Pursuit.—The Parties Found, but no Elopement.—Chagrin of the Pursuers.—Astonishment of Marcy on learning that he has Eloped.—Great Merriment.—The Lady Graduates.—Meets Marcy at Washington with her Husband Years Afterward.—The Introduction.—Marcy as a Writer.—Effect of his Writings.—Martin Van Buren and Mr. Marcy.—Is Appointed Recorder of Troy.—Opposes De Witt Clinton.—Threatened Removal from the Office of Recorder.—The Removal.—Marcy Dependent on his Profession.—Is the Author of the Celebrated Address to Bucktail Members of the Legislature.—Appointed Adjutant-General of the State.—Appointed Comptroller.—The Finances of the State.—Supports Judge Rochester for Governor against Clinton.—Who was the Author of Jackson and Van Buren's Messages?—John Woodworth Resigns his Seat on the Bench of the Supreme Court.—Marcy Appointed in his Place.—Appointed to Hold the Lockport Oyer and Terminer for the Trial of Morgan's Abductors.—The Trial of Colonel Jewett.—Orsamus Turner, the principal Witness against Jewett.—Refuses to Testify.—Exciting and Thrilling Scene.—The Imprisonment.—Character of Judge Marcy as a Judicial Writer.—Contrast between Burke and Marcy.—Opinion of Judge Marcy in the case of the People *v.* Mather.—Judge Marcy appointed United States Senator.—His Reply to Mr. Clay in Defense of Van Buren.—He Sustains Jackson in his Policy.—Marcy at Harrisburgh.—Public Honors.—Speech.—Marcy Nominated and Elected Governor.—



His Administration.—His Messages.—His Repeated Election.—John Tracy.—George Thompson.—Abolitionism.—Martin Van Buren, President of the United States.—Troubles of his Administration.—Marcy Retires to Private Life.—Appointed Commissioner to Settle the Mexican Claims.—Great Defeat of the Democracy, 1840.—Marcy presides at State Democratic Convention in 1843.—Is appointed Secretary of War under Polk.—Mexican War.—Trouble with Generals Scott and Taylor.—Secretary of State under Pierce.—The Affair of Martin Kosta.—Captain Ingraham.—Correspondence with the Austrian Minister.—Marcy Retires to private Life.—His Manner of Life.—His Singular Death.—Reflections on his Character.

WILLIAM L. MARCY was born at Sturbridge, now Southbridge, Worcester county, in the State of Massachusetts, December 12, 1786. He was descended from one of the oldest families in his native State. His father was Jedediah Marcy, a respectable farmer in comfortable circumstances. When William was in his fifteenth year, he was sent to an institution at Leicester, Massachusetts, known as the Adams' Academy, for the purpose of preparing for college.

At this time, the struggle between the Federalists and the Democrats or Jeffersonians was beginning to attain that point of uncompromising bitterness, which eventually rendered it memorable in the history of the nation.

Mr. Adams, the principal of the academy, notwithstanding his many virtues and his rare qualifications, was a strong and even bigoted Federalist, though honest and well-meaning; while young Marcy had inherited from his father, those strong Democratic tendencies which grew with his growth and strengthened with his years.

Thomas Jefferson was then the coming man; his simple manners, his opposition to the aristocratic tendencies of the Federal leaders, then exhibited itself "in combing his hair out of pigtails, discarding hair powder, wearing pantaloons instead of breeches, fastening his shoes with strings instead of elaborate buckles, and putting fine gentlemanism quite out of his heart." All this was pleasing, nay, captivating to those who preferred plain republicanism to

imitations of the court and customs of European sovereigns. To young Democracy, therefore, Jefferson, "the scholar, the philosopher, and the jurist," became a favorite and a leader; while, on the contrary, his very name was a horror to the Federalist, who represented him as an infidel to whom the Bible was repugnant and religion hateful. So terrible did his name at length become to his opponents, that many pious old ladies talked of secreting their Bibles in strong boxes, in case he was elected president, for fear he would seize them and commit them to the flames.

Dr. Adams shared liberally in this hatred to Jefferson, and he frequently prayed "in earnest wrestling," that the country might be protected from his influence.

There was a debating society connected with the academy, to which young Marcy belonged. Young as he was, he was one of the chief disputants, but the partizan sentiments of the principal prevailed in the society; Jefferson and his principles were often assailed with great bitterness. Young Marcy admired Jefferson, and he repelled these attacks single-handed and alone. The ability which he displayed in his defense began to exert an influence in the institution, and at length several of the students united with him, and the young student found himself the centre of a small, but increasing party. Dr. Adams now deemed it his duty to interfere; accordingly, he summoned young Marcy to his room, for the purpose of expostulating with him upon the course he was pursuing, in advancing and sustaining his dangerous political sentiments. To his surprise, he found the young Democrat as firm and unflinching in his presence, as he was in the debate. It was in vain that the good doctor reasoned, threatened, and cajoled. He was met with arguments which he was puzzled to answer, and which were firmly, but modestly maintained.

At length Mr. Adams saw that matters must be brought to a decided point.

“Am I to understand, then,” said he, “that you are determined to openly advocate the course and the principles of that infidel, Jefferson, here in this institution?”

“If I hear him or his principles openly attacked and abused, I certainly shall defend him. If, however, you will forbid all allusion to politics, I will most cheerfully subscribe to the rule,” said Marcy.

“It is my duty, sir, to expose error and wickedness in all ways and in every manner, and to teach my pupils to do the same; and therefore, I cannot establish such a rule,” said the doctor.

“Then, sir, if you allow one class of students to discuss politics, you should give others the same privilege,” said the young man.

“No, sir; not when one side proposes to advocate infidelity and all manner of evil,” said the doctor.

“Who is to be the judge as to what political principles are erroneous?” asked Marcy.

“I am, sir; and to be plain, you must abandon all further public utterance of your sentiments here,” was the reply.

“And if I do not obey this order, what is to be the consequence?” asked the student.

“You will be expelled from the institution, sir.”

“This is bigotry and injustice, Dr. Adams, and I shall leave your institution. My father will sustain me in refusing to remain where free discussion is not tolerated—where narrow and bigoted sentiments can be advanced in the hearing of those who differ from them, and where the privilege of replying is forbidden,” said Marcy.

The next day he left the academy, and returned home. He faithfully related to his father all that had occurred between himself and Dr. Adams; and both of his parents warmly commended him for the manly and independent course he had pursued. He was sent

to another institution, where more liberal principles prevailed.

At length he completed his preparatory course, and entered Brown University, at Providence, Rhode Island, where, in July, 1808, he graduated.

Having decided to enter the legal profession, he removed to Troy, New York. Here he commenced and completed his legal studies.

While a student at law he was an active politician, still adhering to the principles and policy of Jefferson. He frequently participated in political discussions, exhibiting an extensive knowledge of the political questions of the day, which rendered him a formidable antagonist and prominent as a politician.

After his call to the bar he opened an office at Troy; but as he was surrounded by old and experienced lawyers, and was wanting in those brilliant talents and those active energies which naturally attract the attention of the public, his professional success was not flattering. But he continued to pursue his legal studies with the same diligence that he did before his admission to the bar, perfecting himself in those solid acquirements which subsequently gave him his high position as a lawyer, judge and statesman.

The business with which he was entrusted was conducted promptly and with ability. The business men by whom he was surrounded began to discover in the modest and retiring young lawyer, legal abilities of a high order. He was one of those individuals, who, to be appreciated, must be thoroughly known, and, as his acquaintance extended, his business increased.

At length war with England was declared. Young Marcy was now at an age when there is a charm in a military life which is frequently irresistible. Yielding to the warlike spirit which pervaded the country, he determined to become a soldier.

At this time he held the rank of lieutenant in a light infantry company belonging to Troy, whose per-



fect drill and soldierly discipline rendered it the pride of the city. Soon after the declaration of war, young Marcy, acting for the company, tendered its service to Governor Tompkins. It was promptly accepted, and was soon at French Mills, now Fort Covington, the seat of war, on the northern frontier.

The company reached camp about the middle of September, 1812. For some time the young officer was compelled to remain in listless inactivity. At length the American commander learned that a detachment of British soldiers was stationed at St. Regis, seven miles distant. After due consultation among the officers, it was decided to make a night attack upon the enemy, and Lieutenant Marcy was assigned to take command of the attacking forces.

The night of the 23rd of October, 1812, was fixed upon as the time for the movement. Accordingly, on the evening of that day, Marcy, at the head of one hundred and seventy picked men, cautiously left the American camp and moved towards the foe. The moon went down before the troops began the march; the fitful blasts of an October night swept moaning and chilly across the St. Lawrence; amid darkness and silence, the men moved sternly on their perilous errand. So cautiously were they compelled to march, that it was midnight before they reached St. Regis. The enemy, unconscious of their approach, were wrapped in slumber, except the sentinels. The guard on the outposts were suddenly overpowered and disarmed by scouts, who sprang upon them ere their approach was discovered; and Marcy's troops moved so near the works of the enemy, that the tread of the sentinels on duty there, could be heard.

It had been ascertained that two sentinels guarded the main entrance to the fort; by overcoming these, the passage way would be free for the Americans to enter. Halting his men, the young officer, accompanied by three soldiers, crawled on their hands and knees towards the entrance. At length they reached



a point where a portion of the wall jutted out in a sharp angle but a few feet from the entrance; from this projection Marcy and his men sprang upon the sentries, and they were quickly disarmed. During this short struggle, a musket was discharged, which aroused the garrison, and brought the American troops to the assistance of their commander. In an instant the door was broken open, and the assailants rushed into the fort. The British received them with a scattering volley of musketry, and then prepared to defend themselves with the bayonet, swords and clubbed muskets. For a few moments the contest was fierce and desperate; but the superior numbers of the Americans prevailed, and the whole garrison were soon prisoners of war—the first prisoners captured in the war of 1812. Several Americans were wounded; three British soldiers were killed, and many others wounded in the attack.

The brilliant manner in which this expedition terminated, was regarded by the nation as a favorable omen for the Americans, while Marcy and his brave associates received the thanks of their commander and the plaudits of the people. A song, descriptive of the occasion, was composed, set to appropriate music, and sung throughout the country, inspiring the young men with military ardor.

Several stands of arms and a flag were captured. The latter was presented to Governor Tompkins, and it is still preserved as a relic of the war of 1812, and an evidence of the gallantry of him who captured it.

The taking of St. Regis brought Lieutenant Marcy to the notice of General Dearborn, who soon caused him and his command to be attached to Colonel Pike's regiment, then with the main army, which for a time, was encamped at Champlain.

In the month of November, 1812, Colonel Pike moved with his command against the works of the British on Le Colle river, but they were so strongly

garrisoned that he was disastrously repulsed, with considerable loss in killed and wounded.

During this attack, a body of hostile Indians, who occupied a position in a small ravine on the right of our troops, greatly annoyed them while moving to the attack. Colonel Pike ordered Lieutenant Marcy with his company to dislodge them. He obeyed, and in a few moments he gained a point from which he was enabled to open an enfilading fire on the savages, which he did so suddenly and effectually, that a deadly volley was poured upon them before they were aware of the approach of the Americans, sending them howling from their position, leaving many dead and wounded on the ground. But this successful movement did not save Pike's command from defeat, although his attack on the works was gallantly and vigorously made.

Young Marcy was advanced to the rank of captain. He continued in the service until the period for which he enlisted expired, when he returned home and resumed the practice of his profession. But during his absence his clients had sought other lawyers; his business was gone, and he was compelled to commence life anew; though many of his old clients returned to him, his professional progress was slow; though he was somewhat studious, he lacked that industry and energy which is so necessary for a young lawyer who is just commencing his practice; besides, he was never delighted with the details of office practice, and he did not relish the contests of the forum.

Those who knew him at this period, describe him as a person who was careless in his dress, whose boots were strangers to polish, whose hair, to say the least, never appeared in "Hyperion's curls," and who would be regarded by strangers as a dull and inactive person.

His office was directly opposite the female seminary of the late Miss Emma Willard. It was sur-

rounded by a sort of veranda, to which there was a railing. Here, in pleasant weather, the young lawyer was in the habit of sitting, with his feet on the railing, watching the gambols of the young ladies on the playgrounds, or engaged in reading. Though he was wanting in those exterior qualities which constitutes what is called a ladies' man, his society was by no means distasteful to the fair sex, especially those who had the penetration to understand his real character, and to appreciate his abilities.

Among the more advanced pupils of the seminary, was a young lady from Massachusetts, an heiress, very beautiful, and very pleasing in her manner, accomplished, intelligent and talented — one whose "happy and innocent heart sparkled in her face." For some time there had existed a respectful friendship between the lady and the young lawyer. She was pleased with the graces of his mind, the variety of his knowledge, and the superiority of his intellect. There was a charm in his conversation which unconsciously revealed the mental powers of the future statesman. There was no romance in their friendship — no affair of the heart mingled with it. Though their meetings were not frequent, and there was nothing in them to attract attention, yet a rumor at length reached Miss Willard that the lady was secretly receiving the attentions of Mr. Marcy. As such things were strictly forbidden by the rules of the institution, it became her duty to investigate the matter, which she did ; but as she discovered nothing to confirm the report, the matter was dismissed from her mind, though occasionally the rumor would be repeated to her.

One day, the young lady obtained permission to visit Albany with some relations who had called upon her. Some time after her departure, it occurred to one of the pupils, who had interested herself in the affair to quite an extent, that, although the day was pleasant, the lawyer was not in his accustomed place.

She learned, on inquiry, that he had not been seen there that day. Her curiosity and suspicions being thus aroused, it caused her to make further inquiry, and she learned that he had accompanied the young lady and her friends to Albany. As such matters lose nothing by repetition, it was reported "that Mr. Marcy and the lady had eloped for the purpose of being married." The rumor ran like wildfire through the institution, and soon reached the ears of the faculty. The whole seminary was soon the scene of unusual excitement; then indeed "there was hurrying to and fro"—consternation was on every side. Cupid had found a lodgment within those walls dedicated to science alone; one of its fairest inmates had yielded to his witchery, and fled to the bowers of love.

The fugitives were immediately pursued. The lady and her friends were found at a hotel at Albany, quietly enjoying themselves; but, to the surprise of the pursuers, Marcy was not present; he had not even been seen by any of them that day.

It happened that shortly after the lady and her friends left Troy, Mr. Marcy, having business in Albany, proceeded to the city alone by stage. Having transacted his business, he returned at an early hour, to the surprise and astonishment of the citizens, who had learned of his elopement with the pretty heiress. His own astonishment was unbounded when he learned of the commotion which he had unconsciously caused in the seminary, especially when he learned that during the day, throughout the city, it was believed he had absconded, having a clandestine marriage in view; that he had abandoned the law for Gretna Green.

Nothing could exceed the chagrin of the pursuers, on learning how sadly they had been deceived; and for a long time the affair caused much merriment. None enjoyed the joke more than Mr. Marcy and his fair friend.

At length the lady graduated and returned to her



friends, retaining the highest esteem for the young lawyer, who she often predicted would make his way to fame. In the course of time, she married a highly respectable gentleman, who, while Mr. Marcy was in the Senate, was often at Washington. As the lady accompanied her husband, Mr. Marcy renewed his acquaintance with the Troy school girl of other days. She was now an elegant, accomplished, and fascinating woman, and he a senator in Congress, ranking with the great and illustrious of the nation.

“This is Hon. William L. Marcy, with whom I once eloped. I trust you will forgive him, as you have me, for it was only an indiscretion of our youth,” said the lady, on the introduction of her husband to Mr. Marcy.

That elopement was the subject of much merriment in the society at Washington in those days.

The business of Mr. Marcy gradually increased until he attained a very respectable and remunerative practice. Though not a brilliant advocate, he was a strong and an effective speaker at the bar. There was a steady firmness in his arguments founded upon previous deliberations, a well poised judgment, forcible and to the point—sustained and enriched by a perfect and systematic knowledge of the law.

One of his distinguishing qualities was his power as a writer; few men wielded a more vigorous pen than he. His intellect was fertile, his reading extensive, his powers of analysis were strong, and he possessed an intellectual magazine which furnished every material for the pen of a ready writer.

A series of articles published by him over the signature of Vindex, attracted the attention and gained the admiration of the public. He strongly sustained the administration of Governor Tompkins, and the measures of the Democratic party. The intuitive force of these articles—the skill with which facts, circumstances, and arguments were marshaled in them,



caused the public to suppose that "Vindex" was some gifted and experienced statesman.

While William L. Marcy was thus sustaining Mr. Tompkins in the east, the pen of John C. Spencer was another powerful supporter of his administration in the west.

Mr. Marcy's versatile abilities as a writer—the influence of his articles with the public, created a desire on the part of his friends to promote him to some official position; accordingly, he was appointed recorder of the city of Troy.

At this period, Martin Van Buren was just entering on that splendid sphere of political action and influence through which he attained the chief magistracy of the nation. His judicious and penetrating mind early perceived that Marcy's abilities would be no ordinary support to the Democratic party, and to him, as one of its leaders; he therefore took an early opportunity of making the acquaintance of the young lawyer. This acquaintance soon ripened into an intimacy which continued through life.

With Mr. Van Buren, Marcy, in 1817, reluctantly supported De Witt Clinton for governor. He had not yet attained that caution—that wary skill—that subtle policy which constitutes the successful politician, and, dissatisfied with the administration of Governor Clinton, he openly proclaimed his sentiments and his friendship for Mr. Van Buren. This conduct, in the winter of 1818, nearly caused his removal from the office of recorder. But the threatened removal, however, did not abate his zeal for his friend, or his hostility to Clinton; the same indomitable adherence to his principles which caused his expulsion from the academy at Leicester, resulted at length in his removal from the office of recorder. This was one of the earliest cases of political proscription known in the political history of the State.

His removal from office now compelled Mr. Marcy to rely solely upon his profession for a livelihood.

But his mind was fascinated by the detail of politics, and he could not emancipate himself from the demands which his party made upon him. In 1819-20, in the endeavors of Mr. Van Buren and his compeers to remove Mr. Clinton from the Republican party, the talents of Mr. Marcy were exceedingly useful to his political friends, and he became one of the leading politicians of the State. The opponents of Mr. Clinton in the State having, in 1819, organized under the name of the Bucktail party, Mr. Marcy wrote the celebrated address of the members of that party in the Legislature. Few political documents of that character bear the indubitable evidence of ability and research of that remarkable paper. Its dignified diction, its keen, subtle criticism of Mr. Clinton's measures, its apparently disinterested surrender of all personal advantage or ambition in the proposed ostracism of Clinton and his friends, with few of those mercenary opinions which often characterize such productions, did not fail to exert a powerful influence which nothing but the high popularity of Mr. Clinton could have withstood.

This address was soon followed by a pamphlet entitled "Considerations in Favor of the Appointment of Rufus King to the Senate of the United States;" which was equally as powerful as his legislative address, though not so adroitly written.

At the extra session of the Legislature of 1820, held in November of that year, a Republican Council of Appointment was elected. One of the first acts of this body, after its organization, was the appointment of Mr. Marcy to the office of adjutant-general of the State.

The duties of this office, entirely ministerial in their character, were performed with the most scrupulous exactness and promptitude, but they gave him no opportunity to distinguish himself.

In his efforts to procure the passage of the act authorizing a Convention to revise the Constitution, the abilities of William L. Marcy again exhibited them-

selves, and his influence aided in the final passage of the act. After the adoption of the new Constitution, in the year 1823, John Savage, then comptroller of the State, was appointed chief justice of the Supreme Court. This left the office of comptroller vacant, and Mr. Marcy was brought forward, in the caucus of the Republican members of the Legislature, as a proper person to fill that vacancy. But though warmly and even bitterly opposed by Samuel Young, John Cramer and others, who preferred General Talmadge, yet, through the influence of Mr. Van Buren and Governor Yates, Mr. Marcy was nominated by a large majority. On receiving the appointment of comptroller, he removed to Albany.

“The office of comptroller, always an important one, had now become particularly so in consequence of the large expenditures on the Erie and Champlain canal, and the increase of the State debt. The business capacity of the new comptroller was put to the severest test, but so faithfully and skillfully were his duties discharged that no opposition was offered to his reappointment in the winter of 1826. He found the finances of the State in a prosperous condition, and it was no fault of his if they were less so when he surrendered the office into other hands. He introduced many improvements in collecting and disbursing the public funds, and the State is indebted to him for the present admirable system of tolls, and disbursing them.”

While comptroller, Mr. Marcy became identified with the “Albany Regency,” which for many years controlled the Democratic party of the State. In the exciting political events of 1824–26, he distinguished himself for his activity. In 1824 he sustained Mr. Crawford for president, and in 1826 he gave his influence in favor of Judge Rochester for governor, against De Witt Clinton.

In 1828, he was one of those who aided in the nomination and election of General Jackson to the pres-

idency of the United States, and as a consequence gave Mr. Van Buren great ascendancy in the political affairs of the State of New York.

One of the complaints made against President Jackson was, that he did not possess sufficient learning and ability to write his own messages; that the dignified and able State papers which were nominally the work of General Jackson, were really written by Mr. Van Buren; and a certain member of Congress, now no more, made the statement that he had examined the original manuscript of his first annual message, and that it was in the handwriting of Mr. Van Buren. What is still more singular, when the administration of Jackson had passed away, and Mr. Van Buren occupied the presidential chair, the serious charge was made against him that he had not ability sufficient to write his messages, and that they were written by a distinguished member of his cabinet; that some of his state documents were written by Mr. Marcy. There were few abler writers in the State than Mr. Marcy, and perhaps from this fact it was supposed that he was the author of some of those brilliant and able documents that were issued during the exciting and memorable discussion of the affairs of the United States Bank.

In December, 1828, Judge Woodworth resigned his seat upon the bench of the Supreme Court, where he had served with credit and ability since January, 1819. Judge Woodworth was a resident of Albany, and at the time of his appointment was one of the leading lawyers of the Albany bar, eminent for his learning and skill as a lawyer. Distinguished for his profundity and judicial accomplishments, he was one of those who gave to the old Supreme Court that eminence which commanded the respect of the nation. Those who knew him best were surprised that a lawyer of his commanding position did not receive the nomination for chief justice.

On the 15th of January, 1829, Mr. Marcy was



nominated by Governor Van Buren an associate justice of the Supreme Court. He was duly confirmed, and immediately entered upon the duties of his office. His appointment was exceedingly satisfactory to the bar of the State, which entertained the highest respect for his qualifications as a judicial officer. "He possessed a highly philosophic mind, united with the most ample stores of history and jurisprudence. His reflective powers predominated, and to a stranger, as well as to those who knew him intimately, he had the appearance of a man in deep thought. With inflexible honesty, he united an impartiality which rose above every influence and adjusted to all occasions. There was nothing either affected or repulsive about him ; and if ever a man existed who would more than any other have scorned the pitiful fopperies which disfigure the worth of Cato, or shrunk from the harsher virtues of Brutus, it was he."

Soon after his appointment, he was directed by the governor to preside at a Special Oyer and Terminer, held at Lockport for the trial of the alleged murderers of William Morgan. Prominent among those who were charged with complicity in that mysterious affair, was Colonel Ezekiel Jewett, the commander of Fort Niagara, when Morgan was confined in it. At the period when the trial occurred Anti-Masonry had become one of the elements in the politics of the State. This, of course, rendered the position of the presiding judge one of great delicacy and difficulty. But although a politician from his childhood, and up to the period of his appointment to the high judicial position which he then occupied, ardently engaged in promoting the prosperity of one of the great parties in the State, yet few men were better qualified to hold the balance between political excitement and the inflexibility of the laws than he.

When Colonel Jewett came to the bar for trial, there was one individual who knew, or was supposed to know, the full extent of his guilt. This was Orsa-



mus Turner. He was duly subpoenaed as a witness, and amid the most profound and breathless silence he took the stand; the vast audience assembled believed the hour had come when the fate of William Morgan was to be revealed to the world, and his murderers punished by those laws which they had so fearfully outraged.

John C. Spencer, who had labored with untiring zeal—had devoted the strength of his mighty intellect to the task of unmasking this great offense—but as yet with little effect, now believed that his hour of triumph had come. With calm emphasis the witness answered the preliminary questions which were put to him. But when the inquiry touching the guilt of the accused was propounded, a paleness overspread his features, with a rigid determination his lips closed, a look of unflinching obstinacy shot from his eyes, and no further answer could be extorted from him. The silence of the witness gave a deep and painful interest to the scene—an interest which almost suspended the respiration of many in the court-room, producing those emotions which are always experienced while watching a person who is known to be in the act of bringing upon himself some fearful doom, and who is calmly and deliberately awaiting his fate.

Presently the almost smothering silence was broken by the deep voice of the judge saying, in a voice and tone which none but William L. Marcy could assume,

“Witness, are you aware of the consequences of your refusal to answer?”

“I am,” was the firm reply.

“Witness, it is not only upon you but upon society, that the evil consequence will flow from your refusal; and once more the court will give you an opportunity of saving yourself from the consequences of your rash obstinacy.”

The question was repeated by Mr. Spencer. The faint flush which overspread the face of Turner as the question fell upon his ears, was the only response to

the question. Another momentous silence followed. It was momentary, however, just long enough to indicate that the witness did not intend to answer.

“Sheriff,” said the judge, “convey the witness to the common jail, keep him in solitary confinement until you are directed to discharge him by the court.”

That officer approached with his assistants, and through the densely crowded room, Orsamus Turner was conveyed to the dungeons of Lockport jail. Long and weary was his confinement, but with that confinement his obstinacy increased, and as he never answered, the fate of Morgan was never revealed, but by uncertain rumors; and if murdered, his assassins escaped the punishment due their crime, leaving them to answer that dread Being who has said, “Thou shalt not kill.”

The chief distinguishing feature in the character of Judge Marcy, was his ability as a judicial writer. The late David Woodcock, of Ithaca, a distinguished lawyer, and an eminent representative in Congress, once remarked, that “William L. Marcy’s style as a legal writer is not excelled by any judge in America; that what was more commendable in him, he did not lose sight of the substance, in the style.” Perhaps there may have been deeper and closer reasoners, but there have been few who threw more light upon the point they sought to illustrate—few who could render the point they sought to establish more distinct.

The language of Marcy, like that of Burke, was calculated to make men think. “Chatham could rouse the fancy of the multitude and wield their physical energy as he pleased; while Burke carried conviction into the retired and lonely student.” Here, perhaps the analogy ends between Burke and Marcy, for the power “which governed the mind of the former was imagination,” while Marcy was wanting in imagination and fancy. But he united

the two extremes of refinement and strength; his writings were confined to the themes of wise law-givers, reasons of the law, and those considerations which relate to the civilian and legislator.

It was Judge Marcy's fortune to pronounce the opinion of the court in the great case of the *People v. Mather*, reported in 4 *Wend.* 229. This was another case growing out of the abduction of Morgan. Mather was tried as one of the abductors of Morgan, at the Orleans circuit, in November, 1828, before Hon. Addison Gardner. After a very protracted trial, he was pronounced not guilty by the jury, and the special public prosecutor moved for a new trial, on the grounds of the misdirection of Judge Gardner. Whether a new trial could be awarded in a criminal case for the misdirection of the court where there has been an acquittal was then unsettled; nor was it settled in that case, although the court went so far as to say that "if the power exists at all, it will not be exercised unless it is reasonable to infer that the acquittal was induced by such misdirections." Though many of the points in this case were reviewed in the learned and elaborate opinion of Judge Woodworth in the case of the *People v. Vermilyea*, yet very many new, and until then, unsettled doctrines were considered and decided by Judge Marcy in the *People v. Mather*, which renders his opinion in that case one of the ablest in our reports.

On the trial of this case, one William Daniels was asked by the public prosecutor whether, on the 13th of September, 1826, he was at the house of Solomon H. Wright, in New Fane? The witness declined to answer, on the ground that the answer might implicate him in the transaction. Mr. Spencer contended that, as the abduction took place in September, 1826, and the statute of limitations had attached, therefore, as the answer of the witness could not criminate him, he was bound to answer. The defense insisted that if the answer tended to the infamy of the witness, he

was excused from answering. Judge Gardner decided that the witness was not compelled to answer, and to this ruling of the judge an exception was taken. The Supreme Court affirmed the decision of Judge Gardner on this question, declaring, through Judge Marcy, that where the direct answer to a question will disgrace a witness and fix a stain of infamy upon his character, he is not bound to answer; that it is not enough, however, for the witness to allege that his answer will have a tendency to expose him to disgrace and infamy. The question must be such that the answer to it, which he may be required by the obligation of his oath to give, will directly show his infamy, and the court will see that such must be the case, before they will allow the excuse to prevail.

In considering the offense of accessories to a murder, before and after the fact, Judge Marcy said :

“The mysterious obscurity which hangs over the termination of this affair, justifies a well-founded suspicion that Morgan came to an untimely end.”

This case also decides what constitutes the crime of conspiracy, and who may be made co-conspirators—where the venue may be laid in the case of conspiracy—what constitutes a challenge to a juror for principal cause—and what constitutes a proper challenge as to favor—and the exclusion of jurors for an expression of an opinion—when the facts on which a challenge rests are disputed, what course to be taken.

Judge Marcy's comments upon leading questions would alone repay a perusal of the case. Upon these and many other questions, the comments of the judge are eminently learned and interesting.

As has been stated, the jury found a verdict of not guilty, and the indictment and other proceedings were brought into the Supreme Court by Mr. Spencer on a motion for a new trial, for errors in the charge of the judge; but a new trial was denied, and the defendant fully acquitted.

Judge Marcy continued upon the bench until the



4th of March, 1831, when he received the nomination for United States senator in a legislative caucus held on the evening of that day. To the great regret of the bar of the State, as well as his associate judges, he decided to accept the senatorship, and, therefore, resigned the position of judge of the Supreme Court. With the opening of Congress in December, 1831, he entered the United States senate as one of its members. That his eminent abilities as a statesman were properly appreciated at Washington, is sufficiently shown by his being appointed chairman of the Judiciary Committee, a position which conferred upon him the highest honors, and, at the same time, great responsibilities.

Hardly had he taken his seat in the Senate, when Mr. Van Buren and his friends were attacked by Mr. Clay with that energy—that inimitable eloquence which always electrified those who listened to him. In the remarkable speech which he delivered on this subject, he charged Mr. Van Buren and his friends with being the first who brought party proscription into national politics. Van Buren was then minister to the court of St. James. Older and more experienced senators, whose duty it was to defend the absent minister, remained silent. William L. Marcy, however, was not the man to listen tamely to the attack on an absent friend. No matter who launched the thunderbolt, no matter how proud or lofty was the Senatorial record, nor how impressive the eloquence of him who made the attack, he boldly came to the rescue, and his maiden speech in the Senate was in answer to Henry Clay's aspersions upon Van Buren. The two speeches that he delivered on this occasion fully sustained the high reputation which had preceded him to Washington. They were distinguished for great dignity, strength and singleness. Some portions of those speeches would compare with those of Burke, Pitt and Canning.

The next effort which Mr. Marcy made on the floor



of the Senate was his celebrated answer to Mr. Webster's speech on the apportionment bill. It did much to elevate him in the estimation of his constituents, while it gained him the respect of his political opponents.

One of the questions of that day was the tariff; this claimed much of Mr. Marcy's attention, and although he has been represented as entertaining other views of it than those which would tend to the advantage of his party, yet no one can read his speeches on that question, delivered while in the Senate, without being impressed with the patriotic impulses which stimulated him.

He sustained General Jackson on the great question of the United States Bank, and voted against its re-charter. On account of his influence in New York, the veto message was strongly sustained by the people; for no man in the State, at this time, had a stronger hold on the confidence of the people than William L. Marcy.

When General Jackson vetoed the bill providing for the improvement of harbors and rivers, known as the Mayville veto, Mr. Marcy sustained him. Among the improvements which the bill provided for, was "the removal of obstructions from the Hudson river, near Albany." This measure was strongly urged by the people of Albany, his own particular friends, and, therefore, he had a direct personal interest in the passage of the bill; but, as he believed its general features to be dangerous, he emancipated himself at once from all personal interest, and threw his influence against it—a sacrifice which at this period is never made.

In July, 1832, he accepted an invitation from the citizens of Harrisburgh to partake of a public dinner in that city. The occasion was one which will long be remembered. Public honors awaited him there, seldom tendered to any individual. In reply to a sentiment offered by a distinguished statesman of

Pennsylvania, in alluding to the brilliant reception which had awaited him, he said :

“Deeply penetrated by the flattering sentiment which you have just uttered, and impressed with the marks of public favor which I have received since my arrival in your city, still I have not the vanity to suppose that they are intended for any other purpose than testifying the respect in which your citizens hold the great State which I have the honor to represent in the Senate of the United States. Through me the great Commonwealth of Pennsylvania speaks to the Empire State. If I should fail to be proud of my position under these circumstances, I should justly be chargeable with that apathy which would render me unworthy to be the representative of that great State.”

“Enos T. Throop was now governor of the State ; his official term was drawing to a close, and it was well understood that he declined a renomination. Judge Marcy was therefore already nominated for governor by the spontaneous voice of the people, and his nomination by the Herkimer convention in the following September, was but a ratification of his popular nomination.”

At this period, political Anti-Masonry had arisen to a power in the State, which enabled it to contend with great confidence for supremacy over the Democratic party. Its standard-bearers were Francis Granger and Samuel Stevens ; the former was nominated for governor, and the latter for lieutenant-governor.

Many circumstances tended to render this canvass warm and exciting ; prominent among the questions which entered into it, was that of the United States Bank. But the Democratic party were now on that tide of success which, through so many years, gave it victory ; and Mr. Marcy was elected. Resigning his seat in the Senate, he entered upon the discharge of his duties as governor. “His first message, as a literary

production, called forth commendation from every quarter, as indeed, was anticipated by those who knew how powerful and practical was the pen he wielded. The financial policy of the State was, as it had been for several years, the great subject of interest, and it had a deserved prominence in the message." Liberal quotations from it were made by the press in all parts of the nation, and it commanded the respect of the statesman, the scholar, and the man of business.

The great questions of State policy that divided the public mind, and which fell within the purview of the executive, were met and disposed of with that native independence of character, that promptitude, decision, and ability which showed that he and no one else was governor.

So acceptable was his administration to the Democratic party, that he was again its nominee in the canvass of 1834. John Tracy, of Chenango, was nominated for lieutenant-governor. Few men have been more popular with their party, few have enjoyed in a larger degree, the confidence and regard of the people, than Mr. Tracy. Through a long series of years, he was honored by many exalted and responsible positions, and though a strong, uncompromising partizan, yet he passed through party collisions with such singular moderation, such unwavering devotion to rectitude of purpose, that he gained the esteem of political opponents as well as political friends.

Anti-Masonry had now become a thing of the past; it had subserved its purpose; it had brought forward names that were to live forever on the historic page; and it was now merged in the Whig party—a party which, whatever were its perfections or imperfections, formed for itself a record bright with the names of illustrious statesmen, who, in sustaining it, enriched the annals of the nation with the loftiest patriotism—with all that is attractive in learning and all that is brilliant in eloquence and oratory.

Mr. Seward received the nomination for governor,

and Silas M. Stillwell for lieutenant-governor, from the Whigs of New York; and they became the opposing candidates to Messrs. Marcy and Tracy. The latter were again elected.

The governor's next message to the Legislature was characterized by the strong and urgent manner in which it recommended the enlargement of the Erie canal, which it denominated the backbone of the canal system of the State. He insisted that the enlargement should be carried on with sufficient rapidity to exhaust the surplus revenues arising from the canal tolls. The Legislature, coinciding with these views, passed an act in conformity to them. The banking interest, which had now become a delicate and important question, fraught with many difficulties, received the attention of the governor in this message. He discussed the great question of the finances with the force, clearness and ability of a Huskisson. The State of New York—the Union itself—has furnished few if any men who understood and comprehended the financial questions of their day as thoroughly as did William L. Marcy and Silas Wright. Neither of them were distinguished for grace of oratory, though it cannot be said that they were not consummate debaters; and the latter, although he generally confined his remarks to the questions of commerce and finance, always gained the attention of the Senate.

In the month of September, 1834, George Thompson, a distinguished abolition lecturer, landed in the city of New York from England. His mission was to aid in the establishment of those abolition societies which began to exhibit themselves during Mr. Marcy's second administration. The riots and disturbances which succeeded their establishment mark an unusual era in the history of New York city. Thirty-two years passed away, and the principles which were contended for in those societies, and which then doomed all their members to the lawless vengeance of a mob, came to such importance that they rocked



the nation from center to circumference, and amid fearful convulsions the institution of slavery fell to rise no more.

On the 4th of September, 1834, Mr. Marcy presided at an immense meeting, held at Albany, "attended by the most venerable and distinguished men of both political parties," at which resolutions were adopted, declaring that the movements of the abolitionists were incendiary and threatened to disturb the public peace, and therefore ought to be frowned upon by all sincere friends of the Union. What a change from 1834 to 1865!

The speculating mania, which for several years had been increasing with unprecedented rapidity, had now reached its culminating point. Embarrassing as it was to his party, and to his administration, he grappled with all the questions growing out of the troubles, and led his party triumphantly through all difficulties, though his course lay between Scylla and Charybdis; and his second administration closed in a blaze of popularity, which led to his third nomination in 1836, without a dissenting voice. Mr. Tracy again received the nomination for lieutenant-governor. The late Jesse Buell and Gamaliel H. Barstow were the opposing candidates. The star of the Democratic party was still in the ascendant. Marcy and Tracy were again elected by an increased majority. This year, Martin Van Buren was elected president of the United States, and thus the early friends were now one of them the chief magistrate of the State, the other the chief magistrate of the United States.

With the administration of Mr. Van Buren, dark and threatening clouds began to lower around the Democratic party. The independent treasury question, which brought calamity upon that administration, was shared by Mr. Marcy's, and his third official term closed amid an impending storm. But such was the unfaltering trust which the Democracy reposed in



him that, in 1838, he was again put in nomination for governor.

The Whigs this year nominated Mr. Seward for governor, and Luther Bradish for lieutenant-governor. Again he was compelled to confront the coming man of the State, and he was doomed to defeat. Mr. Seward and Bradish were elected by over ten thousand majority, and from that era the star of the former was in the ascendant. Gradually it led him from one degree of greatness to another, until, as the premier in the cabinet of Lincoln, during a civil war of unparalleled magnitude, he became known to the world as the most accomplished diplomatist of the age.

With the expiration of his term of office Governor Marcy retired to private life. He had filled the executive chair of the State, six years in succession, with such distinguished ability, that he carried into retirement the respect of all parties. But his retirement was of short duration. Martin Van Buren could not be forgetful of one who had so powerfully aided in his advancement to a position which was hereafter to render his name memorable in history, and he appointed him one of the commissioners to decide upon the claims against the government of Mexico under the Convention of 1839. This was a highly responsible position, compelling Mr. Marcy to reside at Washington until his powers as commissioner expired, which event occurred in 1842. From that period his residence was at Albany until the day of his death.

In September, 1843, he presided at the Democratic State Convention, held at Syracuse, for the purpose of choosing delegates to the National Convention, then soon to be held. His first choice for president was, of course, Martin Van Buren; but he gave a warm adherence to Mr. Polk, and used his influence in causing the State of New York to cast its vote for him.

At the State convention, called for nominating a

State ticket, he strongly urged the name of Silas Wright for governor.

The election of 1844 terminated so disastrously to the Whig party, that many believed it would never again assemble its scattered hosts. James K. Polk, the president elect, some time previous to his assuming the presidential chair, signified his appreciation of Mr. Marcy's abilities by tendering him the position of secretary of war in his cabinet. He accepted the offer, and entered upon the discharge of the duties of his new position.

As has been well said, "a cabinet appointment is not often a position calculated to add to the reputation of an individual who holds it, as its honors and responsibilities are shared among a number, or monopolized by the head of the administration."

This may be so in times of profound peace, or where the cabinet officers possess no more than medium abilities. But in turbulent times—in times when the energies and abilities are taxed to the uttermost, then the head of a responsible department, if he has the ability, must distinguish himself.

This was the case with Mr. Marcy as secretary of war. The Mexican war demanded a man of practical ability and sagacity, a statesman of experience and energy. Mr. Polk found in Governor Marcy all these requisites—found in him qualities which gave success to our arms and shed a luster on the administration. The dispatches, orders, and instructions of which he was the author during that war, afford the most indubitable evidence of his accomplishments as a minister of state.

While secretary of war, he became involved in a controversy with Generals Scott and Taylor. These illustrious chieftains conceived the idea, that as they were opposed to him in politics, he naturally regarded the brilliant fame which they were gaining, with jealousy, fearing that it would lead to the advancement of the rival party; and they publicly

charged Mr. Marcy with using his official powers to embarrass and retard their military operations. So openly and persistently were these charges made, that he found it necessary to defend himself against them, and he replied with that dignity, force, and reason, which silenced all censure, and relieved him from the serious charges brought against him.

With the close of Mr. Polk's administration, he retired again to private life, where he remained through Mr. Fillmore's administration. The election of 1852 resulted in the triumph of the Democratic party, and the election of Franklin Pierce, president of the United States. This result again summoned William L. Marcy from his retreat, and he became premier of the new administration. With abilities enlarged and strengthened by varied and extensive experience as a statesman, he took his place at the head of Mr. Pierce's cabinet. Here he exercised all the powerful energies of his character, his profound knowledge of all diplomatic relations, and he became the rock of the new administration.

During the administration of Mr. Pierce, an event occurred which greatly distinguished Mr. Marcy as a diplomatist at home and abroad.

“On the 22nd day of June, 1853, Captain N. D. Ingraham, in command of the United States sloop of war St. Louis, arrived at Smyrna, and while at anchor he was informed by the American consul that Martin Kosta, a Hungarian by birth, but entitled to the protection of the United States, was a prisoner on board the Austrian brig of war Hussar, then lying near the St. Louis. Captain Ingraham immediately went on board the Hussar, had an interview with Kosta, and learned that he had resided a year and eleven months in New York, where he took the usual oath of allegiance to the United States, in July, 1852, and was in possession of a legalized copy of a declaration which he made of becoming an American citizen; he had come to Smyrna on business, intending to return;

that on the 21st of June, while seated on the Marina, he was seized by a party of armed Greeks, employed by the Austrian consul general, thrust into a boat, and carried on board the Hussar, where he was held in close confinement. Captain Ingraham immediately addressed a note on the subject to Mr. Brown, charge d'affaires of the United States, at Constantinople, who officially expressed the opinion that the discharge of Kosta should be demanded.

“ Captain Ingraham accordingly, on the 2nd day of July, at eight o'clock, A. M., demanded of the Austrian commander, the release of Kosta by four o'clock P. M., declaring that he would otherwise take him by force. At this time a steamer was lying near the Hussar, ready to convey the prisoner to Trieste. At eleven o'clock, the Austrian consul general proposed, under protest, to deliver Kosta to the French consul, subject to the disposition of the consuls of the United States and Austria, and not to be delivered without their joint order; in the agreement drawn up, the ministers of the United States and Austria, the consuls of the two powers, were to give the assent to the delivery of Kosta. As this proposition was a sufficient assurance of the personal safety of Kosta, Captain Ingraham accepted it, and the Hungarian was soon set at liberty and returned to the United States.”

This affair caused great sensation in Europe and in America. The Austrian government deemed it a high-handed and unwarranted act on the part of Captain Ingraham, and a correspondence on the subject ensued between Mr. Hulsmann, charge d'affaires of Austria, and Mr. Marcy, in which the matter was elaborately discussed. This correspondence was eagerly read throughout the civilized world. The questions involved were in a measure new, and more or less affected all governments who recognized the laws of nations. It proved Mr. Marcy an accomplished statesman and diplomatic correspondent.



The conduct of Captain Ingraham was fully sustained and approved by the United States government, and in August, 1854, Congress voted him a gold medal.

In March, 1857, at the close of Mr. Pierce's administration, Mr. Marcy again retired to private life, never again to be oppressed with the cares of state or burdened with official duties. He now entered upon a life congenial to his taste and his age, and for which he had long been anxious to resign the cares of office, and all that worldly ambition can give. With books—with his chosen companions, in the pleasures of intellectual conversation, his days passed pleasantly by. Mr. Marcy was a lover of the great poets of England. Among these his particular favorites were Thomson, Cowper and Gray. His imagination was captivated by the former. His heart inclined him to the kind and benevolent emotions which flow so copiously from the poems of Cowper; the touching tenderness and beautiful sentiment of Gray were always pleasing to him; and his splendid, truthful and lively Elegy was a life-long companion for him. These authors relieved and refreshed his mind amid the cares of state. They rendered his retirement bright and flowery, shedding upon it the "ethereal mildness" which caused his days to pass in tranquillity and peace.

On the 4th of August, 1857, Mr. Marcy retired to his library as usual. An hour and a half passed away, when a friend called to see him. He was directed to the library, where, as a sort of privileged person, this friend often conversed with the statesman. He knocked at the door. Receiving no answer, he presumed upon his privilege and entered. Mr. Marcy lay apparently asleep upon a sofa, with a book open and turned down upon his breast. His features were calm and peaceful; but a second look revealed something unnatural in the general appearance of the face. He approached nearer, laid his hand upon his forehead, and he felt the cold, clammy presence of death.



The form—all that was left of William L. Marcy—was before him, but the spirit had fled.

There, in the silence of his study, without a struggle, he calmly left the world. On removing the book from his breast, it proved to be his favorite poem, the *Elegy of Gray*—that poem, which, in departed years, had been his solace and delight, was the last object on which his eyes rested ere they closed forever. Thus, four months to a day, from the time he retired from the cares of state, he died.

All who knew him concur in one uniform testimony to the purity of his morals, the sobriety and temperance of his habits, and the generous warmth and tenderness of his affections. With no habits of luxurious expense or ostentation, and addicted neither to the pleasures of the table or fashionable amusement, his home was the scene of happiness, often interrupted by his various offices, yet still he had a home wherever he was, for he was admirably fitted for domestic life.

“Governor Marcy was twice married. His first wife was Miss Newell, a descendant of one of the early settlers of Sturbridge; his second wife was a daughter of the late Benjamin Knower, formerly treasurer of the State; and for a long time one of the most active and influential politicians belonging to the Democratic party in the city of Albany.

“As a private citizen, Mr. Marcy was always held in high esteem for his good example in the fulfillment of social and religious duties. The Albany Academy, and the Albany Female Seminary, were much indebted to him for assistance as a patron, or counsel and advice as a trustee.

“In person, he was about the ordinary height; his frame was stout and muscular, but not gross; his forehead bold and full; his eyebrows heavy, his eyes deep set and expressive; his mouth and chin firmly molded; his manners were affable and courteous; free from pretense, yet dignified.”

Through his whole life, he regarded the Christian religion with veneration and respect—a respect founded on an earnest conviction of the truth of the evidence and doctrines of Christianity, resulting from the frequent perusal of the scriptures.

## EVERT VAN BUREN.

Born in Columbia County, New York.—His Father.—Enters the Office of J. & A. Vanderpoel, as a Law Student.—Commences his Practice at Penn Yan, New York.—The Yates Bar.—Mark H. Sibley.—Dudley Marvin.—Van Buren's Early Practice.—His Success.—Removes to Buffalo.—Speculation in Buffalo in 1836.—Benjamin Rathbun.—His Trial for Forgery.—Van Buren one of his Counsel.—Rathbun's Conviction.—Scene of his Leaving for Prison.—Van Buren Returns to Penn Yan.—His Success at the Bar.—The Divorce Suit.—Case at Bath.—The Trial before the Magistrate.—R. W. Morrison opposes him.—Van Buren in Danger of Defeat.—Morrison Charged with Blasphemy and the Tables Turned.—Amusing Scene.—Van Buren a Candidate for Senator against William H. Seward.—Van Buren Defeated.—William H. Maynard.—Albert H. Tracy.—The Election of 1832.—William Wirt.—The Baltimore Convention.—The Election of 1850.—Van Buren as a Public Speaker.—Aids the Whigs.—Public Discussion between him and Mark H. Sibley.—Singular turn of the Discussion.—Van Buren Removes to Chicago.—Elected Recorder of that City.—Amusing Anecdote.—General Characteristics.

EVERT VAN BUREN was born at Kinderhook, in the county of Columbia, N. Y., November 3rd, 1803. He was the son of Barnet Van Buren, a reputable citizen, and a prominent politician of Columbia county, representing it at the Assembly of this State in the session of 1819. Jacob Rutsen Van Rensselaer was one of his colleagues in this body. Evert having finished his education, entered the office of J. and A. Vanderpoel, then a distinguished law firm at Kinderhook, where he prepared for his admission to the bar. James Vanderpoel subsequently removed to Albany, became prominent in the politics of the State, and at length was appointed one of the circuit judges, discharging his duties with ability and fidelity. In him, the politician was lost in the judge. Aaron Vanderpoel removed to New York, and was appointed judge of the Superior Court of that city.

Mr. Van Buren was called to the bar in March, 1827, and immediately commenced the practice of his profession in the village where he studied.

He continued here however, but one year, when he removed to Penn Yan, opened an office, and commenced practice. He soon took a prominent position at the Yates county bar ; although at that time, John C. Spencer, Mark H. Sibley, Dudley Marvin and other distinguished lawyers often appeared there, and thus Mr. Van Buren was obliged to enter the lists at once with antagonists of renown and experience.

It was a custom of the ancient gladiators, while training a young man for the arena, to compel him at once to grapple with formidable adversaries, in order to develop his strength and render him self-reliant. Thus Mr. Van Buren, by early collisions with distinguished lawyers, rapidly gained confidence in his own abilities, while his intellectual powers were developed and strengthened. His practice extended into the surrounding counties, and he soon acquired the confidence of the public, and controlled a substantial law business.

In the year 1836, Buffalo became the theater of a speculative mania, the history of which now seems almost fabulous. Immense fortunes were made in a single day. Men who really were not worth a dollar, boasted of their hundreds of thousands, and talked of their immense real estate transactions, as though such things had been the business of their lives. City lots passed from purchaser to purchaser, their value accelerating with every change, until their price almost exceeded computation. This state of affairs greatly increased legal business, and attracted many lawyers to this Golconda, among whom was Mr. Van Buren, who in the summer of 1836, made Buffalo his home. Having often been engaged there in various legal matters, he was fortunate in making the acquaintance of several leading business

concerns in the city ; and he entered at once into a large and extensive practice.

Among those who experienced all the vicissitudes of that day, many of which had almost dramatic interest, was Benjamin Rathbun. This man, who possessed a gigantic business intellect, united with many amiable and high-toned qualities, carried away by the wild speculation which surrounded him, entered into operations too vast, if not for his intellect, for his means ; and finding himself amid a sea of embarrassments, sought to aid himself by stupendous forgeries, the discovery of which astounded the public, while it brought ruin and degradation upon himself. So elevated had been his character, such his liberality and honesty with those in his employ—with all the business public to whom his affairs extended—that upon his arrest there was a deep and open expression of sympathy for him, never before witnessed in a case where the evidence of guilt was so palpable. Such, however, was the nature of his forgeries, that they admitted of a strong defense, which was seized upon, and he prepared to defend himself with earnestness and determination, and a remarkable legal contest ensued, the like of which was never before witnessed in Buffalo.

In this defense Mr. Van Buren was retained with others, and he took a distinguished part in that celebrated trial, and in discussing before the Supreme Court in banc those nice and abstruse legal questions which grew out of the trial. Rathbun was convicted and sentenced to State prison for a term of nine years. The sentence was confirmed by the appellate court, a pardon was refused by the executive, and the princely man of business—the much-loved and distinguished citizen—left the city of Buffalo for his gloomy abode within the walls of Auburn prison. But his departure from the city was more like a triumphal exodus than a departing criminal. The most eminent citizens and business men of the city escorted him to



the depot, and even to the very vestibule of his prison, while his fate was everywhere lamented.

Mr. Van Buren's participation in the defense of Rathbun added much to his professional prosperity, and drew a large legal business to his office. Meanwhile, speculation continued for a time; but at length the revulsion came, and with it a general suspension and stagnation of business. Van Buren continued at Buffalo until 1840, when, at the solicitation of several business men at Penn Yan, he returned to that village, and resumed there the practice of his profession with more than his former success.

Among the many important cases which Mr. Van Buren conducted to a successful termination, while a member of the Penn Yan bar, was that of a man who had commenced proceedings against his wife for a divorce on the ground of adultery.

The action was instituted through the effects of jealousy alone. "Trifles light as air" had assumed the form of verities; and brooding over his supposed wrongs, which were made plain and clear to him by some honest Iago, he determined to rid himself forever of his faithful and undeviating wife. The only witness upon whom the husband relied to establish his case and her guilt, was a man whose deep displeasure the wife had incurred, and who had threatened to revenge himself upon her. He was one of those who never forgot or forgave an injury—never lost an opportunity that led to his revenge. Some time previous to this trial he removed to the western part of Illinois. Upon being notified of the trial, without fee or reward he voluntarily traveled from his far-western home to give his evidence against the injured wife. His testimony was of the most dangerous nature. Concealing his venom under the garb of plausibility and an apparent disinterestedness, he prepared to strike his victim a fearful and terrible blow. He took the stand and deliberately testified to the most damning act of infidelity and guilt. The only favorable matter which

Van Buren could elicit, after the most rigid and skillful cross-examination, was the implacable hatred which the witness entertained against the lady. This he succeeded in making fully apparent. From the bitterness of the heart the mouth spake; and with some other minor incidents which were proved in the defense, he went to the jury.

“Gentlemen,” said he, in the course of his remarks, “this is a case where domestic happiness, where love and affection are prostrated before the demon of jealousy, so justly called ‘the green-eyed monster.’ A few short years ago this young woman was led to the altar, all buoyant with hope and exuberant with joy, by the man she loved, and whom, in the fond trusting love of her young heart, she believed loved her.

“As the assembled guests at that happy marriage gathered around her in the home of her youth, where the blended love of father, mother, brothers and sisters shed its holy radiance upon her, they almost envied the happiness which seemed in store for her; and as the solemn words of the marriage ceremony were pronounced, ‘whom God has joined together, let no man put asunder,’ it seemed as though listening angels caught the impressive words, and recorded them in their own bright sphere. But alas! what a fearful change has come over that happy, joyous bride. The husband that led her to the altar, and then from her happy home—from the loved ones, who, with many prayers, had watched over her girlhood days, in all that beautiful tenderness which centers in parental affection—has become the dupe of designing wretches—the victim of jealousy. His love has turned to gall and bitterness, and he charges her with a shameful crime. But by whom does he attempt to establish this charge? Is it by a fair, impartial witness?—one who tells the disgusting story with reluctance and sorrow? No, gentlemen; he seeks to establish it by the evidence of a suborned villain!

“What is the motive which impels this witness to testify against the defendant? I will tell you what it is. He imagines that he has been wronged by her, and has sworn to be revenged. Ah! gentlemen, fearfully, but I trust not fatally, has he attempted to keep his oath. Revenge, gentlemen, is the deadliest, the most relentless passion that can possess the human heart—a passion that never tires and never dies. It will travel continents, and compass sea and land, to hunt out the object of its hate, and slake its thirst in the blood of its victim. Such is the passion that fires the heart of this miserable man, and which has caused him to travel a thousand miles, without reward or the hope thereof, to destroy forever the hopes, the happiness, and worse than all, the character of this unhappy young lady, whose fair fame is as unsullied and as pure as the early dew-drop, unstained even by the dark story which perjury has related against her.

“Gentlemen, let me say—and I know you will concur in what I say—that a man whose revenge is as deep, whose hatred is as implacable as is that of this witness, will fly to perjury with alacrity as the means of gratifying his dark and malignant passion; and you will only look at the story of this woman’s guilt as the fabrication of revenge.”

There were several nice legal questions involved in this case, which Mr. Van Buren argued with ability and learning. The trial took place at Canandaigua, and was conducted for the plaintiff by one of the ablest lawyers in the State; but the lady was triumphantly acquitted, and the divorce denied.

Soon after this trial he was retained to assist the district-attorney of Steuben county, in the trial of an indictment against a woman, charged with manslaughter. The victim was a small girl who had been bound to the defendant, and who was so cruelly beaten and maltreated by her mistress that she died. It appeared in evidence that the defendant frequently held the girl so close to a blazing fire, that she was fearfully

burned. At other times she was confined, in cold freezing weather, under the house, in a place so small that she could neither stand nor sit up; there she was kept by the cruel woman until her feet and hands were so horribly frozen that several of her fingers and toes fell off. The defense set up, besides a plea of not guilty, was ingenious, and plausibly maintained with all the ingenuity of eminent counsel. After a day had been exhausted in taking the testimony, the counsel for the prisoner on the morning of the second day commenced his address to the jury, closing at noon, when the district-attorney announced that Mr. Van Buren would sum up the case for the people after dinner. Accordingly, at the opening of the court in the afternoon, he commenced his argument. The court house was densely crowded, the galleries being filled with ladies. His speech on this occasion elicited the warmest commendation. The enormity of the offense, the intense suffering and cruel death of the little girl, were dwelt upon with a pathos and eloquence which drew tears from those even who were unused to the melting mood.

The sophistry of the defense was exposed, and the legal points closely and thoroughly considered.

“I have,” said Mr. Van Buren, “for my whole life had something to do with courts of justice; I have witnessed the development and exposure of human depravity; I have listened to the recital of crime—aye, I have read accounts of savage barbarity—of the tortures of the Inquisition, described in all the fearful detail of history, and in the imagery and eloquence of romance. But poetry, eloquence, and romance are tame and insipid compared with the simple story of the suffering and death of this poor child.”

The woman was convicted and sentenced to State prison for a term of years.

In the early days of his practice, Van Buren was engaged in the trial of an important suit before a justice of the peace in one of the towns of the county of



Yates, who was far more famous for his vital piety than for his legal knowledge, and who never failed to seize every opportunity to convince people of his great religious zeal.

Van Buren appeared for the plaintiff, and was opposed by the late R. W. Morrison, then a leading member of the Yates bar. As the trial progressed, it became apparent that the justice was clearly against the plaintiff, and the matter presented a very unpromising appearance for him. But Mr. Van Buren, with his usual perseverance, struggled to overcome all difficulties in his way, and to ingratiate himself into the favor of the court, but in vain; he made no impression, and defeat seemed inevitable.

At length a question arose, which led to considerable discussion. In his reply to Van Buren, Morrison remarked, that he proposed to explain the nature of the question, from *Alpha* to *Omega*. The instant these words fell from his lips, the justice brought his fist heavily down on the table before him, exclaiming:

“ Mr. Morrison, sit down! do you think I am going to sit here and hear my Saviour abused in this way? It is an outrageous blasphemy, sir; sit down!”

It was in vain that the lawyer attempted to explain, that he did not intend any disrespect to the Saviour, and that he only used common words.

But the justice insisted that he had been guilty of blasphemy.

“ Do you think I don't understand the meaning of words, sir? I am a Scriptor man, and I sarch the Scriptors because in them is etarnal life. You ain't the only man that's got book larning. Sit down, I say. I have caught you in your blasphemy! you can't blaspheme in my court!”

As Morrison could make no impression upon the justice, he said:

“ Why, your honor, Mr. Van Buren will tell you that these words are not blasphemous.”



“You can’t get him to help you out of this scrape, sir; you are fairly caught. He ain’t a professor, I know; but then, he won’t blaspheme like you do,” said the justice.

“Why,” said Morrison, determined to set himself right before the court, “Alpha means the beginning; it is a letter of the Greek alphabet, and Ome—”

“Stop, sir; are you going to blaspheme again? don’t you think I understand what words mean, when I’ve read the Bible all my life?”

“Van Buren,” said Morrison, turning to him; “come, be decent now, and explain the matter to him.”

“Oh, this is too delicate a matter altogether for me to interfere with; I can’t interfere in a misunderstanding between you and his honor, here,” said Van Buren, in a very dignified manner.

“There,” said the justice, “what did I tell you just now? I knew he wouldn’t help you. Mr. Van Buren, you are like the man in the New Testament, who, although he was a hardened sinner, wan’t a great way off from the kingdom of heaven. You can go on with your case now; but no more of your blasphemy, Mr. Morrison.”

The case was resumed; but the tide was turned in Van Buren’s favor; through the remainder of the case, his hope increased, and when it was decided, it was in Van Buren’s favor.

To expose crime and drag it from its refuge behind statute and common law; to unmask the criminal’s defense which ingenuity, legal skill, and acumen had thrown around fraud and corruption; to give innocence protection, was the delight of Mr. Van Buren. But it cannot be denied that it was also his pleasure to resort to subterfuge, to sophistry, and all the arts which the ingenuity of counsel can devise, to save his client’s case; nor was he exempt from the charge of sometimes shielding by professional skill the guilty,

and depriving the gallows and the prison of their just dues.

But all lawyers who undertake the defense of a criminal, do so at the hazard of clearing a guilty man. The law vouchsafes to all a fair and impartial trial, no matter how guilty; and if in the conduct of such a trial, a guilty man escapes, the fault is with the law, and not with the counsel for the defense.

Like most lawyers, early in his professional life, Mr. Van Buren gave more or less attention to politics; but at no period of his life did he surrender his professional ambition. While it is true very poor or inefficient lawyers often make eminent politicians, it is not always that a gifted politician makes a distinguished lawyer. Hence the political arena is crowded with eminent politicians, at least who lay claim to eminence, whose legal career was a failure. Of course there are many exceptions; there are many whose political and professional career adorns both politics and the bar.

In the year 1830, Mr. Van Buren was a candidate for State senator, in the old seventh Senatorial district, to which the county of Yates belonged. William H. Seward was also a candidate for the same office. The Senatorial convention met at Geneva in September, and the gentleman who during the early part of the year had been the candidate of those opposed to Mr. Seward, withdrew a few days before the convention assembled. Whereupon the friends of Mr. Van Buren, without his knowledge or consent, proposed his name as a candidate. Accordingly, at the convention a close contest for the nomination ensued, which resulted in favor of Mr. Seward by one majority, and he was afterwards elected senator. Both of these gentlemen were then quite young, both of them commencing their professional and political career with ardor and ambition, though Mr. Van Buren was several years younger than Mr. Seward.

Though the former was not disheartened by the result of this convention, yet it doubtless had the

effect to detract much from his love of politics. Had he received the nomination for senator, it would doubtless have increased his political aspirations, and with his acknowledged talents he would, perhaps, have entered upon a long and brilliant political career in the politics of the State. While, on the other hand, had Mr. Seward been rejected by the convention, such is the nicely balanced scale of fortune, especially in politics, that the struggle in the convention at Geneva might have decided the political fate of William H. Seward, and not given to New York that great and illustrious statesman. The fate of monarchs, of the most renowned heroes and conquerors, has frequently been decided by circumstances of far less moment than that which gave Mr. Seward a seat in the Senate of New York in 1831. He was at that time less than thirty years of age.

The Senate then contained some of the most eminent men in the State; very few of his own political friends, however, were among the number. Nathaniel P. Tallmadge, William H. Maynard, John W. Edmonds, Albert H. Tracy, Levi Beardsley, and Henry A. Foster, were among the most prominent senators. William H. Maynard was a senator for the fifth Senatorial district. He resided at Utica, and was a few years older than Mr. Seward. A lawyer by profession, whose career at the bar had already been brilliant and successful, he had attained a commanding position in the politics of the State, and was the acknowledged leader in the combined opposition to the Democratic party. He first entered the Senate in January, 1829, and became the leader of his party in that body. When, in 1831, Mr. Seward became a member of the Senate, Maynard found in him and in Albert H. Tracy, able and powerful supporters. And though at this time largely in the minority, yet such was his genius and power that he sometimes gained decisive advantages, which tended to strengthen and sustain the falling fortunes of his party. But his brilliant career was

suddenly terminated by the hand of death. He died early at the close of the year 1832, leaving Mr. Seward, young as he was, the champion of his party in the Senate and in the State. The death of this truly great man was an opportune circumstance in the political career of Mr. Seward. It removed a powerful and splendid though generous rival, and left the field to him. How well he profited by this advantage is attested by the history of the State and nation.

Mr. Van Buren represented his Congressional district in the Anti-Masonic convention which nominated William Wirt for president of the United States. No matter what the political complexion of that convention was, it covered itself with glory in nominating that great and illustrious man; and though defeated, his name sheds a flood of glory upon the page of his country's history. The husbandman at his plow, the artisan at his anvil, the seaman on the mast, paused when he heard that William Wirt was no more. His grave is a hallowed spot; great memories cluster there; and those who visit it may well exclaim:

“Such graves as his are pilgrims' shrines;  
Shrines to no creed or code confined—  
The Delphian Vales, the Palestines,  
The Meccas of the mind.”

The convention met at Baltimore, in August, 1832. John C. Spencer was chairman, and many of the statesmen and legislators of the nation were present. Mr. Van Buren was made one of the committee on resolutions. The result of the election which followed entirely dissolved the Anti-Masonic party, and the subject of this sketch gave his allegiance to the Democratic party, and ever since, his fealty to it has been unswerving. He was a strong supporter of Douglas, and a War Democrat, ardently supporting the government during the rebellion.

In 1836, he supported Martin Van Buren for the presidency, and again in 1840. In the canvas of



1844, he took a prominent part, advocating the election of Mr. Polk, and devoting a large part of his time in addressing public meetings in various parts of the State.

During this campaign the Whigs of Yates county, through their central committee, invited the Democrats to publicly discuss the great issues of the day, upon a time to be fixed. The challenge was accepted, and Mr. Van Buren was chosen as the champion for the Democrats, and the distinguished and much lamented Mark H. Sibley was chosen by the Whigs to conduct the debate for them. An orator more popular, more gifted with all the aspirations of true eloquence, or more affluent in all the qualifications of a skillful debater, could not have been selected. Such was the man whom the Democracy of Yates invited Mr. Van Buren to meet in open debate. A discussion took place in a grove near Dundee; several thousand people were listeners, such was the interest which the public took in the matter. It was arranged that Mr. Sibley should open the debate, and occupy one hour—Van Buren to follow, with two hours at his disposal; the debate to be closed by Sibley, who had the same time in which to reply.

It will be remembered that one of the great questions of that campaign was the annexation of Texas; the Democrats favoring and the Whigs opposing, principally because it would extend and perpetuate slavery. Mr. Sibley dwelt with great eloquence upon this point, and in the course of his remarks spoke of Mr. Clay as the embodiment of the Whig party, the great exponent of its principles. On the 16th day of July, 1844, Clay wrote his celebrated but unfortunate Alabama letter, in which, among other things, he said: "I have, however, no hesitation in saying that, far from having any personal objections to the annexation of Texas, I should be glad to see it," &c.

Late in the evening before the debate, through a



friend direct from New York, Mr. Van Buren received the *National Intelligencer*, containing this letter. He immediately regarded it as a powerful weapon to be used in the coming contest, and such it proved to be. Mr. Sibley, who addressed a meeting the day before, in a remote part of the county, came to the discussion entirely ignorant of the existence of the letter.

In his reply to Mr. Sibley, Van Buren said: "Fellow citizens, Mr. Sibley has told you that the annexation of Texas will extend and perpetuate slavery, and this is the only ground upon which he is opposed to the annexation of that great and fertile country. He tells you, too, that Mr. Clay is the great exponent of Whig principles, the embodiment of the party. I admit it. No more truthful remark has this day fallen from the lips of my accomplished and able opponent; and now let us see what the great embodiment himself says." He then read that memorable letter to the audience. The effect which it produced can better be imagined than described. Notwithstanding the powerful elocution of Mr. Sibley, in which, with consummate ingenuity and ability, he explained the terms, connection and real meaning of the letter, still it had a most damaging influence upon the Whigs. The Democrats retired from the discussion jubilant and exultant, confidently believing that a tide was setting in which was to lead them to victory. And they were right.

Mr. Van Buren continued at Penn Yan until the fall of 1856, when he removed to Chicago, where he still resides. Such were the business facilities which awaited him there, that he immediately entered into a large and extensive practice, which in its pecuniary results and the popularity to which it led, much exceeded his most sanguine expectations.

In April, 1862, he was elected a judge of the Recorder's Court of Chicago. He discharged the duties of this office to the satisfaction of the public, during

his term. He was offered a renomination, but he declined, preferring the duties of his profession to the cares of office.

Mr. Van Buren always enjoyed pleasantry, wit, and repartee. He could relate an anecdote with great piquancy, and relished a joke, even at his own expense.

A case once occurred which tested the manner in which he was a party to a laughable transaction.

One day, in returning home from his office, he stopped at his boot-maker's, put on a pair of new boots which had just been finished for him, wrapping the old ones in a piece of brown paper, and went his way with the boots under his arm. As he passed along, he observed a brace of fine chickens for sale. He purchased them, and they too were done up in a brown paper wrapper. With the boots and chickens under his arm he proceeded towards home. Presently he met a darkey whom he knew.

'Here, Sam,' said he, 'don't you want a pair of boots—pretty good ones, too?'

'Yes, sah,' said the darkey, with a grin.

Handing the boots to the gentleman of color, he went on. In a few moments he met a friend, with whom he stopped to talk.

'What have you there, Judge?' said the friend.

'A very nice pair of chickens, which I just now bought,' was the reply.

'Chickens,' said his friend, taking hold of the bundle; 'queer chickens, I should think.'

'Yes,' said the judge, 'they are very large and nice ones.'

'They are not chickens.'

'What in the world are they?' was the reply.

Upon that remark, the judge, who began to feel somewhat astonished at the remark of his friend, opened the bundle, when, lo, he was still in possession of the old boots, and the darkey had gone away rejoicing with the chickens.

“Well,” said the judge, “I am a pair of chickens the poorer, but the darkey has gained what I have lost.”

In the language of another, “Judge Van Buren is always the kind, large-hearted, and hospitable gentleman, and in his intercourse with the world, frank, friendly, and sociable. In the enjoyment of a liberal competence, derived from a successful but laborious professional career, we trust there are many years of happiness and usefulness remaining for him, and that his days may be extended to the longest possible limit.”

## DUDLEY MARVIN.

Scene in the Court Room at Batavia in 1827.—Dudley Marvin and John W. Hurlbert. —Description of them.—Their Persons and Characters as Lawyers.—Marvin's Birth and Parentage.—A Student at Colchester Academy.—His Taste and Abilities.—Amusing Anecdote.—In Danger of Expulsion.—The Imprisoned Professor.—Marvin before the Faculty as a Culprit.—The Defense.—The Witty Turn.—The Discharge.—Marvin Refuses to Declaim.—Interesting Conversation with Dr. Hawks, regarding the Choice of a Profession.—Marvin visits Canandaigua.—Enters the Office of Howell & Gregg as a Law Student.—His Admission to the Bar.—His First Case.—Manner at the Bar.—Remark of B. Davis Noxon.—His Manner of Cross-examining ■ Witness illustrated in the Trial of the People *v.* Newman.—Interesting and Amusing Cross-examination of ■ Lady.—The Case of the People *v.* Bostwick—Amusing Incident.—Result of the Trial.—Marvin Elected to Congress.—His Career in Congress.—His Dislike for Public Speaking.—His Reception at a Convention in Canandaigua.—The Vote of Thanks.—Amusing Speech of a Constituent.—Marvin is Compelled to make a Speech.—Has an Application for ■ Law Student.—Rare Qualifications of the Proposed Student.—Doubting Scene between J. C. Spencer and Marvin.—Doubt if you Dare.—Spencer Prosecuted.—Marvin Retained as his Counsel.—The Trial.—Extract from Marvin's Speech.—The Result.—Marvin again in Congress.—His Report on Manufactures.—Celebrated Case of the People *v.* Gray.—Marvin Appointed by the Governor to assist the District-Attorney.—Prisoners apply to him to defend them.—The Short but Prophetic Reply.—The Trial.—Its Singular Result.—Hosmer's Remarks Concerning it.—Marvin's Connection with the Anti-Masonic Trials.—Trial of Ganson.—Examination of the Stage Driver.—His Final Answer True.—Marvin Removes to Chautauque County.—Attempted Assassination of Lowrey.—Marvin Engaged in the Great Trial of the People *v.* Newman.—The Trial.—The last important Case in which he is Engaged.—Retires from the Bar.—His Habits.—Elected to Congress.—His personal appearance more fully described.—His Characteristics.—Mark H. Sibley.—Amusing Business Transaction between him and Marvin.—Death of Marvin.

“WHO is that rather large, portly man, with such a fine eye and head, not far from Mr. Chandler, in the bar? He must be a lawyer, I think; at least he looks like one, and a good one, too.”

This remark was addressed to a law student who sat next to the speaker in the court house at Batavia, one morning in June, 1827, during a session of the

Circuit Court. The business of the day had not yet commenced, though the lawyers, jurors, witnesses, and spectators had assembled.

“That is Dudley Marvin, of Canandaigua, one of the most eminent lawyers in the State; he is eloquent, witty, sarcastic or pathetic, as the occasion requires,” said the student.

“And that is Dudley Marvin; I have often heard of him as a famous advocate, but I never saw him until now. Who is that small man, dressed in black, with dark eyes and hair, and such an expressive face; the one who is sitting by himself at the other end of the bar?”

“That is John W. Hurlbert, of Auburn; he is as gifted, though perhaps not as close a lawyer as Marvin. As a criminal lawyer, he has no equal in the State. I have heard him address juries on several occasions; at times his small form seemed looming up to the proportions of a giant, with the big glowing thoughts he uttered,” was the reply.

“John W. Hurlbert? he is the lawyer who defended Medad McKay on his last trial, and he cleared the Indian chief who was tried at Bath for shooting Stephens, near Hornellsville. I have heard that he made everybody in the court house cry except the sheriff, and he was obliged to cough several times to keep on the stern look which he felt himself obliged to assume; and I believe Hurlbert defended Mary Green for murdering her own child, did he not?” asked the first speaker.

“Yes,” replied the student, “I heard that trial. Heavens, what a talk he made to that jury! His language, his gestures, and his whole appearance were full of sincerity and candor, he spoke so touchingly of the poor girl’s misfortune (he always calls crime a misfortune, when he is defending a criminal) that the hearts of the jury opened and let him in. When once there he remained. But when he came down upon the witnesses against her, who, as he contended, de-



sired her conviction to subserve certain vile purposes of their own, I never listened to such terrible, such scathing language; it seemed as though his tongue was a two-edged sword, and the witnesses criminals on trial, instead of Mary Green. It was amusing to see them endeavor to brave it out, and appear unconcerned, but they might as well have undertaken to disregard the thunders of Jove."

"Well, what did the jury do?"

"What did the jury do?" said the student. "Why they acquitted the woman almost as soon as they were organized, though more than half of the community where she lives, believed her guilty, and they would like to hang little Hurlbert, as they call him, for saving her; but he did his duty I suppose, and no more."

The conversation was here interrupted by the crier making the usual morning proclamation. It truthfully describes the appearance and the popularity of two eminent and highly distinguished lawyers of the past.

In many respects their minds were similar; both of them too often indulged in the pomp and glare of rhetoric—redundancy and excess of ornament. Both minds glowed with the fires of intellect and imagination; though perhaps they acquiesced too readily in first thoughts, and came to their conclusions by a rapid and penetrating glance, instead of verifying their impressions by a close and vigilant induction. Yet it was impossible not to be impressed with their rare qualities. Mr. Marvin, however, possessed the additional capacity of illustrating common thoughts and subjects, with beauty and interest, of explaining them with a grace which gave them new force, vigor, and vivacity; a rare quality in a speaker—the secret of success in a writer.

As deep, reasoning, logical, emotionless lawyers, neither Marvin, nor Hurlbert compared with John C. Spencer, Marcus T. Reynolds or Nicholas Hill, when before the court in banc; but before the jury, the former were the superiors.

Mr. Hurlbert and Mr. Marvin were at Batavia on the occasion which has been referred to, as opposing counsel in the important case of the People *v.* Bostwick and Graves, which will be described hereafter. This sketch, however, is devoted to the life of Dudley Marvin.

He was born at Lyme, New London county, Connecticut, on the 6th day of May, 1786. His father, who was a respectable merchant, placed him, when twelve years of age, at the Colchester seminary. Here he soon attracted the attention of his fellow students and his teachers, as a boy of the highest promise; the precocity with which some of his mental powers were manifested, might be regarded as extraordinary. Subservient to his early taste, however, he surrendered much of his time to poetry, belles lettres and mental philosophy. He also developed some of those exhaustless stores of wit, vivacity and humor, for which he was afterwards so distinguished.

Among the many anecdotes that are related of his student-days, the following will illustrate his native sagacity and wit:

On one occasion, with the aid of a less gifted classmate by the name of Sabin, he imprisoned a certain irritable, prying, pug-nosed professor of mathematics, in one of the distant rooms connected with the seminary, where he was compelled to remain five or six hours—until he made night hideous with his cries for relief. Terribly enraged at this indignity, the professor commenced the work of detecting the culprits, threatening instant expulsion to the guilty ones. Young Marvin, who was keenly watching the movement of matters, fearing that some confession might be extorted from Sabin, instructed him, when summoned before the faculty, to make no confession, and to answer as few questions as possible. In due time both Marvin and his companions were ordered to appear before the dreaded tribunal. Sabin was at

first terribly frightened ; as soon as he received notice to appear, he rushed into Marvin's room, exclaiming :

“O dear ! O dear ! I shall break down ! I know I shall ! Old Hunks (ain't he properly named, though ?) he'll look right through me. I can't lie !”

“Lie, you fool. Nobody wants you to lie. You don't know enough to lie, so don't undertake it. Say as little as possible ; don't say anything if you can help it. I'll take care of you if you will only do as I tell you ; so don't be frightened,” said Marvin. Sabin, becoming more composed, promised to do as he was directed, and in a few moments they were in the presence of the assembled faculty.

Sabin was first interrogated, but so faithfully did he obey the instructions of his friend that nothing of importance was elicited from him, though his manner in some measure confirmed the suspicion against him. Then came Marvin's turn, and he was plied with all manner of questions, which he managed to answer so adroitly that nothing positive was established against him.

“Marvin,” said the pug-nosed professor, in his peculiar, snarling manner, “this great crime, sir, my cruel imprisonment—it makes my very blood boil to think of it, lies between you and that young man,”—pointing to Sabin—“and now what have you to say to that, I should like to know.”

“I am delighted with what you have said, Professor,” said Marvin.

“And so you glory in your iniquity, do you ? What do you mean, sir ?” said the excited tutor.

“I mean that I am delighted to hear you say that the great crime of which you speak lies *between* Sabin and myself. I was only fearful that you suspected it *laid on* one or both of us,” said the student, with a ludicrous composure.

This answer was equivalent to the ablest defense. It convulsed all in the room with laughter, except the astonished professor, who looked like an old-fash-

ioned exclamation point, in italics—a mark of wonder, surprise, and, in this case, indignation. Marvin and his friend were acquitted; even the sharp eyes of Doctor Hawks, the preceptor, twinkled with merriment, as he pronounced their discharge.

One of the rules of this institution required the students to declaim, at least once in two weeks. It is remarkable that Marvin, who was so distinguished in his future years for his eloquence, should persistently refuse to comply with this rule. He was once urged by a blatant, mouthing, and conceited professor of elocution to attend one of his oratorical displays, and he replied in the language of Hamlet, “‘O, it offends me to the soul, to hear a robustious, perriwig pated fellow tear a passion to tatters,—to very rags—to split the ears of the groundlings; who, for the most part, are capable of nothing but inexplicable dumb show, and hideous noises.’ Professor, do you recite Hamlet much in your exhibitions?”

A few days before Marvin left Colchester Seminary, Doctor Hawks, who was much attached to him, inquired what occupation he intended to follow.

“I think of studying law,” was the reply.

“Studying law? why, Dudley, you will never succeed as a lawyer; you have no capacity for public speaking, and without that, you cannot succeed at the bar,” said the doctor.

“I have persuaded myself that I have some qualifications for a lawyer, and as for oratorical power, I shall get on quite well with that, I have no doubt. I do not believe there will be any difficulty in telling to others that which has been closely impressed upon my own mind. The great question with a lawyer should be, to learn something to talk about, before he undertakes to talk.”

“But Dudley, can’t you conceive of a man’s knowing more than he can explain? Have you not known persons who had splendid ideas, but no language to communicate them?”

“That often happens, but the reverse is more frequent. There are students here, and men everywhere, who have more language than ideas, more talk than thoughts. Hence the truth of the old poet,—

“ ‘Distrustful sense, with modest caution speaks,  
It still looks home and short excursions makes,  
But rattling nonsense in full vollies break.’ ”

“A most sensible answer, young man. Why, you can talk, and to some purpose, too. You are as voluble as you are sensible. I like your ideas. He who attempts to speak in public, or write for the public, without research or ideas, is like a soldier firing blank cartridges—very noisy and very ineffectual. I think, Dudley, you may as well turn lawyer. There may be a small matter of honesty in the question, but you will get along with that. I am a minister, and have always thought that honesty and lawyers—well, never mind what I thought; go ahead and be a lawyer, Dudley, and be as honest as you can and be a good lawyer.”

After leaving Colchester, he was induced to accompany a gentleman on a tour through western New York, in the course of which he visited Canandaigua. Here he remained some time, making the acquaintance of the late Judge Howell and John Gregg, then distinguished lawyers, composing the eminent firm of Howell & Gregg. He perfected an arrangement with these gentlemen for pursuing his studies in their office; and in October, 1807, was regularly entered as a student at law.

Such was the progress which he made in his studies, such was the capacity and skill which he exhibited as a special pleader and draftsman, that his preceptors proposed to pay him a liberal salary, provided he would agree to remain with them until admitted to the bar. To this he consented, and he remained with them until September, 1811, when he was called to the bar.



“What of all things is the best?” asked Chilon of the Oracle.

“To know thyself, and the laws that govern thee,” was the reply.

The most frequent obstacle to the success of lawyers is forming too exalted notions of law, as a system of acquired, practical dexterity, and too humble notions of it as mental energy, logic, reason, learning. Hence, there is a wide distinction between a lawyer, skilled through the medium of research and learning, and the dexterous, shrewd, cunning practitioner who, with no systematic knowledge of the law, yet in a certain sphere becomes successful, because he is simply sharp. With the one, we have the idea of strength, sagacity, power; with the other, small cunning, arch trickery, and all the devices of the mere empirical sharper.

When Dudley Marvin came to the bar his legal acquirements were of the highest order; in all things pertaining to his profession, except experience, he was an accomplished lawyer. Immediately opening an office at Canandaigua, he commenced practice in that village. About this time he was retained to defend a case brought by his early friend and preceptor, Judge Howell. On the trial he exhibited much acumen, knowledge and skill, but extended to his eminent opponent all the amenities and professional courtesy which characterize a liberal mind.

When the evidence was closed, he entered upon the duty of addressing the jury. Up to this period no one at Canandaigua had ever heard him attempt any oral effort. On this occasion his manner was so natural, so self-possessed, his case so thoroughly prepared, that he gained much in reputation as a lawyer, and he passed rapidly into a successful practice. Within a very few years he was distinguished throughout the State for those powerful and oftentimes thrilling speeches at the bar, which were regarded as specimens of consummate legal authority.

His manner at the bar was generally dignified and

courteous, though occasionally, when ruffled or displeased, he was uncivil—even rough. He spoke with great deliberation but with ease; when excited, he spoke more rapidly. His speeches were usually short, brilliant, and impressive. He spoke with the force of a man confident of great powers; possessed of ample materials, he pronounced his opinions with authority, and expected his hearers to qualify and apply them. His extreme subtlety of observation rendered him powerful on cross-examination—he probed to the quick—he penetrated to the bottom of the subject, and yet he seldom left a sting in the mind of the witness.

The celebrated advocate and eminent civilian, B. Davis Noxon, of Syracuse, once remarked that, “Dudley Marvin is the strongest lawyer on the cross-examination that I ever met, because he himself never gets cross.”

This was illustrated in the trial of the important and memorable case of the *People v. Newman*, at Mayville, many years ago. The prisoner was indicted for stabbing a prominent merchant one evening as he was entering his own gate. One of the principal questions in the case was the identification of the prisoner. For this purpose, the prosecution introduced a very sensible and prepossessing woman, about thirty years of age, who testified very closely to matters tending to connect the prisoner with the offense. Marvin, who was on the defense, had learned that the woman was living with a man who was not her husband, a fact which was unknown in the community where she resided. Aware that this circumstance alone would not destroy the weight of her testimony, he shrewdly decided not to touch that matter, but laid a plan to impeach her memory, which would, if successful, be a very strong point against her evidence.

Commencing with that plausible manner so natural to him, he asked her if she distinctly remembered the circumstances which she had related on the direct examination.

“Certainly I do, sir,” was the prompt reply.

“Madam, is your memory good?”

“Yes, sir, very.”

“May I ask you if it is as good in recollection of days and dates as it is in events?”

“It is equally correct in both cases, sir.”

“Is it as good in the recollection of the countenances of persons?”

“I think it is, sir.”

“Well then, madam, can you recollect the date of your marriage to the man with whom you are now living?”

The witness reflected a moment, then replied that she could not remember the exact date. The question was shrewdly answered.

“Can you remember about the time, madam? Not to be very particular, can you tell me what month of the year it was?”

The lady saw she was caught, but rather than disclose the manner in which she was living, did just what Marvin expected she would, answered that she could not remember even that circumstance, and she was permitted to leave the stand. Nothing could exceed the chagrin of the counsel for the prosecution at this utter failure of one of their most reliable witnesses.

The case of the People *v.* Bostwick and Graves, which has already been mentioned, was one of the most important criminal cases in which Mr. Marvin was engaged. The defendants were highly respectable citizens of Auburn, who were connected with one of the great lotteries then in existence in the State. A heavy prize had been drawn by a citizen of Genesee county. The defendants having retained, under some rule of the concern, a per centage on the amount drawn, an action in equity was commenced against them to compel a specific performance of the conditions under which the ticket was purchased. In swearing to the truth of their answer to the bill filed, perjury was charged. As it was sworn to in Genesee

county, they were duly indicted there, and, as we have seen, Messrs. Marvin and Hurlbert were retained, the former to aid the prosecution, and the latter, with Michael S. Myers, Esq., of Auburn, to defend.

Such was the anxiety of the complainants to convict the defendants that Marvin had been retained at a heavy expense, a large portion of his fee having been provided for by subscription. In the course of the trial the sheriff of the county was introduced as a witness for the people. Hurlbert ascertained that the sheriff was a subscriber to this fund.

“Sheriff,” said he, on the cross-examination, “are you not considerably interested in favor of the people in this case?”

“No, sir, not much.”

“Did you not subscribe, with others, towards raising the money to fee Mr. Marvin?”

“I object to that question, if your honor pleases,” said Marvin; “it is irrelevant.”

“I understand that my friend has strong personal reasons for his objection, and out of consideration for him I shall waive the answer,” replied Hurlbert, with great gravity.

Marvin, a little puzzled, cast a quick glance at the solemn face of his opponent, and fearing the jury would believe matters much worse than they really were, said:

“I shall insist upon an answer to the question—I desire the answer.”

“Ah, I see—I see now; I was mistaken at first, but I see now that the counsel has very strong reasons for desiring the answer, and it may be answered. I am happy to aid the counsel—very happy. Go on, sheriff.”

“Happy to aid me, sir? What do you mean?” said Marvin.

“Why, the counsel is fearful that the sheriff will deny his signature to the subscription when pay is demanded of him, and my friend proposes to extort a

confession from him here, in open court, that will bind him to it. Well managed, Mr. Marvin—exceedingly well managed, sir; you have really got the sheriff now; he'll be obliged to help pay your fees, sir. I congratulate you."

It was difficult to tell which felt this sharp cut most keenly, Marvin or the sheriff; but the laugh which ran through the court-room told how much it was enjoyed by the bench, the bar, and the spectators; and for once, Dudley Marvin had nothing to say.

The trial consumed several days—each point was closely contested, and each day the interest in it increased.

At length the evidence was closed, and the counsel prepared to address the jury; it was a case which elicited all their intellectual powers, and afforded a rich mental treat for those who were fortunate enough to be present.

One of the counsel was struggling "to protect an outraged community against a dark and insidious crime, easily perpetrated, but difficult to detect." The other was laboring "to protect innocence from an undeserved punishment, to disentangle unsuspecting worth from the meshes of craft, subtlety, and a dishonest complaint."

After the arguments of counsel, the jury listened to the charge of the judge, and then retired for deliberation.

An hour elapsed, and they returned into court with a verdict of not guilty. Thus ended one of the most interesting criminal cases ever tried in the county of Genesee.

Though Mr. Marvin had little taste for politics, yet it was impossible for him to stand entirely aloof from the political excitement which surrounded him. Very early in life he identified himself with the Federal party, and he continued true to its fortunes until it was merged in another organization.

In the year 1823 he represented the twenty-sixth



Congressional district in Congress. At the opening of that session, Mr. Clay and Mr. Barbour, of Virginia, were rival candidates for speaker.

The former was chosen by a vote of 139 against 42, exhibiting his great popularity at that period. Mr. Marvin, who had long been a friend and admirer of Mr. Clay, warmly sustained him in this contest, and that great statesman recognized his abilities and friendship by giving him a respectable position on three important standing committees in the House.

One of the questions before Congress that session, was the modification and revision of the then existing tariff. The debate in the House on this question created great interest in the nation. It was continued through several weeks. Mr. Marvin, however, occupied the floor but once during the discussion, and then only for the brief period of a half hour; but brief as were his remarks, he established his reputation as an able and accomplished debater. Like many successful speakers, conscious of their powers, he seldom claimed the attention of the House. It was a remarkable feature in his character, that when at home it was next to an impossibility to persuade him to address a popular assemblage; and what renders such refusal still more singular, whenever he did appear before the public as a speaker, he never failed to captivate and charm his audience.

It is related of him that soon after his return from one of the sessions of Congress, a convention assembled at Canandaigua, consisting of his political friends. In the course of its proceedings, a resolution was unanimously adopted, approving of the course of the Hon. Dudley Marvin in Congress. Mr. Marvin was not present, but a committee immediately waited upon him, gave him a copy of the resolution, and invited him to address the convention. He accompanied the committee to the court-house, where the convention was sitting. On entering the room, he

was received with cheers, and then loudly called upon for a speech. He immediately arose, and in a few words expressed the satisfaction which the resolution gave him,—acknowledged the deep obligation which he felt himself under to his generous friends who had so highly honored him,—and took his seat.

This meager speech from an orator so celebrated, fell rather coldly upon the enthusiasm of the convention. For a moment there was a dead silence in the room. Suddenly one of the delegates, a venerable farmer from the town of Bristol, arose, and turning to him, said :

“See here, Mr. Marvin, this won’t answer. We have sent you to Congress, because you are a first-rate man to represent us there. We’ve just told you that we are satisfied with what you have done; but we want you to tell us how you did it, and how the affairs of the nation look down there for our side. I’m not one of them that likes to hear a speech on all occasions, especially from those that are always talking. Now we want some account of your stewardship from your own mouth. Now, gentlemen of the convention, I propose that Mr. Marvin address this assembly, and if he refuses to do so, then I propose that we rescind the vote of thanks we have just passed.”

Once more cries for “Marvin!” “Marvin!” rang through the room. He obeyed the call, and delivered a speech which was highly gratifying to his constituents.

During one of the recesses of Congress, he was engaged in the trial of a cause which created considerable interest. At the conclusion of one of those appeals for which he was so famous, the court adjourned for dinner. On reaching the door of the court room, he was accosted by a man who said he wished to talk with him a moment.

“Well, I will hear you,” said Marvin.

“I have a boy whom I want you to take and make a lawyer of,” said the man.

“How old is he?” asked Marvin.

“He’s eighteen year old, stout and rugged; he’s got a pair of lungs like a bellows,” said the man.

“That is very well as far as it goes. Has he any other qualifications?” asked the lawyer.

“Yes sir, he’s got the one great qualification of all,” was the reply.

“Well, what is that?”

“Why, good heavens! Mr. Marvin, he’s the confoundedest liar in our town. If that ain’t a big qualification for a lawyer, then I don’t know. I thought when I heard you in the court room just now, that it wouldn’t take long for Sam to come pretty nigh up to you,” said the man.

Marvin assured him that his son’s qualification might bring him to the bar, for a short time, before he was aware of it, and for that reason he thought the boy would get along without any of his help, and thus the matter ended.

The Canandaigua bar at this time consisted of such lawyers as Spencer, Sibley, Worden, Wilson, Howard, Gregg, Norton, Strong and others, all of whom possessed more than ordinary abilities.

In speaking of John C. Spencer, Marvin often said: “Spencer was constituted for a lawyer, just as some men are constituted for mathematicians or as engineers, &c. He is all lawyer, and whatever intellectual effort he attempts, has the stamp of the lawyer upon it. If he should undertake to talk, or, as the saying is, use his liberty, in a religious meeting, he would give a disquisition on reversionary interest, contingent remainders or resulting trusts, by way of illustrating the rewards of just men made perfect.”

Though Spencer was less vulnerable to the keen sarcasm of Marvin, than many others; yet even he was often the victim of a sharp repartee, which gave the former a decided advantage in a contest.

This was once illustrated in a case in which they were opposed to each other. In the course of the

trial, an argument on some legal question occurred, in the course of which, Marvin asserted very strongly a certain proposition, and concluded by saying, that it was undoubted authority.

“I doubt it, I doubt it,” said his opponent.

“Well, doubt, if you dare take the consequences,” said Marvin.

“What are the consequences, sir?” asked Spencer.

“Why, he that doubts shall be damned,” was the quick reply.

The color of Spencer’s face proved that the shaft had taken effect.

In the year 1819, after a bitter political contest, in which Mr. Spencer had been very active, he was prosecuted by some opposing partizans, in an action growing out of matters which occurred during the campaign. The case was planned with singular skill, and prosecuted with great determination and ability.

As the consequences of defeat would be extremely disastrous to him, he had some cause for alarm, though really no cause of action existed against him. After mature deliberation with his friends, Dudley Marvin was retained to try the cause for him.

It was understood that Spencer was to plan the defense, and that Marvin should conduct it at the bar without the least assistance from any person.

On the day of trial, Mr. Spencer, attended by his counsel, entered the court house, in the character of a defendant; taking his seat in the bar, the trial commenced. Though opposed by Elisha Williams, who withheld none of his great legal abilities, never did Marvin appear to better advantage; never did he evince more indubitable evidence of his commanding powers as an advocate, than on this occasion.

His invective against the partizan malice which instigated the action was most withering.

“Gentlemen,” said he, “I can excuse the heat and anger engendered by party strife. I am ever wil-

ling to palliate some vituperation on such occasions, for forbearance at such times, is due to the weakness of human nature, to the excess of sudden passion. But I cannot excuse that bitterness which outlives the occasion—merges into cool and calculating revenge—erects its fiery crest—hisses forth its venom—pursues with its scorpion sting, private character and domestic peace, seeking the law as a means of vengeance, with all the dark malevolence—with all the hideous attributes of the assassin, without the assassin's courage.”

The defense of Mr. Marvin was triumphant, and resulted in the utter defeat of Mr. Spencer's enemies.

But to return to his Congressional life. During the Congressional session of 1825, although one of the most energetic and laborious members of that body, he seldom mingled in the debates which occurred in it. As the second on the committee to whom was referred the investigation into the amount of duties paid on imported woolen goods, and into the condition of the woolen manufactures of the nation, in the absence of the chairman, Mr. Penston, of Pennsylvania, Mr. Marvin submitted an elaborate and able report, which Mr. Mallory, of Vermont, in the succeeding session of Congress, as chairman of the Committee on Manufactures, asserted aided him materially in preparing his report on the “alteration of the acts imposing duties on imports,” commonly called the “Woolen bill.”

It is certainly safe to say, that Mr. Marvin's career in the eighteenth Congress, if it was not brilliant, was highly creditable to him, and as an indication of the satisfaction which it gave his constituents, he was unanimously renominated to represent them in the succeeding Congress.

With the close of the nineteenth Congress, he retired from the political field to the duties of a private citizen.



In the month of October, 1829, the celebrated trial of Richard and James Gray occurred at Batavia. The defendants had been indicted for the murder of Harvey Davis, an innkeeper at Le Roy, New York. The accused were father and son. This fact, and the singular circumstances attending the homicide, created intense interest, rendering it one of the most important cases ever tried in the county of Genesee.

Levi Rumsey, a very reputable member of the Batavia bar, was then district-attorney. The case was so important that the governor was solicited to send the attorney-general to assist the prosecution. That officer having another engagement, the governor directed that Dudley Marvin should be retained in his place; and Mr. Rumsey immediately wrote to him in obedience to the instructions of the executive.

Before receiving this note, he had been written to by the friends of the Grays, inquiring on what terms he would undertake their defense; and accordingly he replied to the district-attorney by saying that he could not give him a definite answer until he heard further from the prisoners. Thus the matter rested. In the mean time, he happened to be at Batavia on business. The Grays, learning that he was in town, sent a friend to him for the purpose of ascertaining precisely what his charge would be for undertaking their defense.

“Two hundred and fifty dollars and expenses,” was the reply to the Grays.

The agent repaired to the jail for the purpose of repeating this answer. He soon returned.

“Well, Mr. Marvin,” said he, “they say you charge too much, and that they will be hanged if they will pay any such sum.”

“Very well; tell them they shall have their choice, for they shall be hanged,” was the reply.

Accordingly, he accepted the retainer of Mr. Rumsey. The trial took place, and one of the defendants—the son—was convicted of murder, and executed;

while the father was convicted of manslaughter, and sentenced to the State prison during his natural life.

The prosecution of this case involved the difficult task of grouping and combining a mass of apparently incongruous and unimportant circumstances, a close and critical examination of several difficult and technical legal questions, and of drawing from unwilling witnesses circumstances within their knowledge. But with the perseverance, fidelity and pertinacity of an explorer after some occult truth—some fascinating mystery—Marvin followed the prisoners through every labyrinth of the law, through the devious windings of the circumstances, until he fixed upon them the sure and certain mark of blood—the indubitable evidence of their guilt.

His address to the jury was powerful, convincing, and eminently successful. Like Webster, in the trial of the younger Knapp, he was accused of convicting the prisoners by the force of his eloquence alone, by a brilliant and powerful radiation of light on remote and doubtful circumstances.

The prisoners were defended by George Hosmer, then in the midst of his professional success. His defense was one of the most powerful ever made by that eminent lawyer. In speaking of this trial in after years, Mr. Hosmer remarked that “it was not the evidence that convicted the Grays; it was Marvin’s thrilling and terrible appeal; it was so overpowering that nothing could withstand it. Such efforts misdirected, or directed against innocence, are fearful, and I have sometimes thought that a public prosecutor of such abilities should not be permitted to appear where the prisoner’s guilt is doubtful.”

Some time after the execution of the young man, circumstances were developed which indicated that the father alone was guilty.

Mr. Marvin was connected with many of the important and exciting trials resulting from the abduc-

tion of Morgan. One of the most important was the defense of Ganson, a wealthy stage proprietor, at Batavia, who was indicted for being concerned in the removal of Morgan. Marvin conducted the defense in this case. It appeared in evidence that one of the defendant's coaches was used for the purpose of the abduction, but by whose authority or direction the coach was thus used, did not appear, though a powerful effort was made to connect Ganson with the matter.

The person who drove the stage was placed upon the stand.

"Who gave you the way bill, that night?" asked the public prosecutor.

"I don't remember."

"Who was in the coach when you started from Batavia?"

"I think there was three men; one of them, I think, was Morgan."

"Who shut the coach door?"

"I can't tell."

"Did you receive directions from any person?"

There was an objection to this question, but the court allowed the answer.

"Yes; somebody told me to drive like hell, for there was a man inside that was bound for that place."

"Did you obey orders?"

"*I think one of the men went through,*" was the reply.

This was all that could be elicited from the driver, and as there was no proof that Ganson had any knowledge that Morgan was in the coach, he was acquitted by the jury.

Mr. Marvin continued to practice his profession until the year 1835, when he removed to the city of New York, formed a partnership with William Austen, Esq., an accomplished lawyer, and commenced the practice of law in that city under many advantageous circumstances. His reputation preceded him, and he

immediately took a high position as an advocate at the New York bar. He continued to practice with increasing success, until he became engaged in a certain patent right, which for a time promised much success, and even wealth; this attracted his attention from his profession, and his practice began to decline. At length his patent right failed, causing the loss of large sums of money and many of his clients. His friends in the city offered to guarantee that his practice should be re-established, provided he would remain in the city. For a time he proposed to do so; but certain interests which he had in lands in the county of Chautauque, rendered it necessary for him to remove there.

Accordingly, in autumn of the year 1835, he became a resident of Ripley, in that county. Here, he did not design to devote much time to his profession; but so high was his reputation as a lawyer, that retainers came to him from all parts of western New York.

Among the important cases in which he was engaged at the Chautauque bar, was that of the *People v. Newman*, tried in Mayville, in January, 1846.

Newman had been indicted for attempting to stab Nathaniel A. Lowrey, a prominent citizen of Chautauque county, in November, 1845.

On the evening before the election of that year, Mr. Lowrey left his store for his residence; on reaching his gate, a man, whom he supposed to be Newman, came up with him, accosting him with the accustomed salutation, "Good evening." The next instant he received a blow from the man, who, in giving it, stumbled, and partly fell, and at the same time dropped something upon the walk; recovering himself, he ran rapidly away.

On entering his house, Lowrey discovered that he was bleeding profusely from a wound in his side, made with some sharp instrument. Recollecting that he heard something fall upon the walk, he caused

search to be made for it, which resulted in finding a large heavy knife, having a two-edged blade, which was covered with blood.

It was soon ascertained that Newman owned a knife similar to this; but it was also known that one of the merchants in the village once had a package containing a dozen of these knives, which had been disposed of to various persons about the country.

One of the most embarrassing questions for the prosecution, was the entire absence of motive in the mind of Newman for the commission of so fearful a crime, or, indeed, for the commission of any act of violence against Lowrey. However, some slight proof tended to establish the fact that the accused committed the crime at the instigation of other parties, enemies of Lowrey, now out of the jurisdiction of the court. But the principal question in the case was that of the identity of the prisoner. The whole case, however, created a legal contest seldom equaled in western New York.

The prosecution was conducted by Abner Hazleton, a distinguished member of the Chautauque bar, then district-attorney, and subsequently county judge of that county, assisted by Richard P. Marvin, now one of the justices of the Supreme Court for the eighth judicial district, and John B. Skinner, of Buffalo. Mr. Marvin was assisted by the late Judge Mullett. Seldom do the records of our State courts present such an array of distinguished and brilliant lawyers as appeared on the trial of this case. Seldom has there been a case which so thoroughly stimulated them to the exertion of their every faculty. During a whole week, the court-room at Mayville was the scene of a close, able, and at times thrilling contest, each side contending with a determination which would not brook the idea of defeat. At length, after addresses of almost unparalleled ability from the respective counsel, the jury retired. A lengthy deliberation followed, and they returned into court amid the most breathless



silence from the vast crowd of spectators present, and rendered a verdict of guilty.

This was the last case of any importance in which Marvin was engaged; other matters claimed his attention and drew him from the bar, though he could not entirely emancipate himself from the claims which his old clients believed they had upon him.

Previous to his removal to Ripley, he became somewhat dissipated in his habits; he was one of those genial, social, pleasing, gifted persons, upon whom the blight of intemperance naturally falls, leaving the cold-hearted, the callous, and the sordid, to that negative virtue, which, while it is commendable, possesses none of those heroic qualities which inspires him who with lofty sentiments, generous emotions, and liberality, unites many faults, which require fortitude, self-denial, and philosophy to overcome.

Whenever the genial sunbeam falls upon rich and generous soil, noxious weeds will spring into existence with useful and ornamental vegetation, while in the cold shadows of the rock, in the arid sand, all may be pure and free from weeds, but no beautiful flowers spring up to spread their fragrance through the surrounding air—no luxuriant fruit gives pleasure, happiness, and benefit to man.

When Mr. Marvin became fully aware of his dangerous condition, he suddenly resolved upon reformation, and he sternly and heroically carried that resolution into effect. He united with the Presbyterian Church, at Ripley, and from that event, through the remainder of his life, he exhibited the example of an undeviating Christian.

In the autumn of 1846, he was elected by the Whigs of the thirtieth Congressional district a representative in Congress. Early in December, 1847, he delivered a speech on that part of the president's message which referred to the Mexican war. Some of his remarks, particularly those in connection with the question of slavery in the territories, will long be

remembered as almost prophetic, and imbued with an astonishing prescience.

After serving through the session of 1847-8,—discharging his duties with great ability and exactness,—he retired from the cares of office, and from the political field, to the duties of private life.

Dudley Marvin was, as has already been stated, above the middle size, rather portly, but with a figure finely proportioned. His countenance was indicative of his gifted mind—handsome, open, and intelligent. He had a remarkable presence, in which dignity and urbanity combined. One of his talents, the one which most distinguished him in private life, was a rare turn of pleasantry, which was delicately ironical, and which tinged his vast fund of anecdote with a most pleasing interest.

He was fond of the society of literary men, with whom he always felt himself at home. He was deeply read in history, ancient and modern, possessing a critical and refined taste. His favorite poets were Spenser, Shakespeare, and Ariosto. He used to say of Pope, that he was the most Roman of all the British poets, and the least offensive in his Romanisms.

With the odes and satires of Horace, he was perfectly familiar, from which he often, in his speeches and conversation, made natural and pleasing quotations, among which was the following: “Prometheus was obliged to add to that original clay with which he formed mankind, some ingredient taken from every animal, and, thus he applied the vehemence of the raging lion to the human breast; and hence,” said he, “we have soldiers, warriors, laws, and—lawsuits, &c.”

The kindness and generosity of Mr. Marvin overcame all acquisitiveness, rendering him extremely loose in his financial affairs. During a portion of his life, he paid but little attention to his pecuniary

engagements, forgetting them in the demands which his profession or the cares of office made upon him.

The late Mark H. Sibley, who always held Mr. Marvin in high esteem, used to relate an amusing incident illustrative of this feature in his character.

“On one occasion,” said Mr. Sibley, “at a time when he was much embarrassed in his money matters, he came to me with a note against a man residing in one of the western counties, which amounted to five or six hundred dollars, and which had several months to run before it would become due, desiring me to take the note and advance him the money upon it. Believing the maker to be responsible, I did so. Some time after the note came to maturity, I wrote to the payor requesting payment; he replied by pleading the pressure of the times, and requesting some further time for payment. Time passed on, and payment continued to be delayed.

“At length, learning that Marvin was about to visit the place where the maker resided, on professional business, I called upon him, and requested him to take my note and collect it for me, which he readily consented to do. Amid the multiplicity of my professional engagements, the matter nearly passed out of my mind. One day, however, I met Mr. Marvin, and it occurred to me.

“‘General,’ said I, ‘what about the note against Emerson? How did you succeed with it?’

“‘O, admirably; admirably. I saved the debt for you, Mr. Sibley, and it’s all right.’

“‘I am glad to hear you say so. Where are the funds?’ I asked.

“‘Why, I took the money, and used it as occasion required,’ was the reply.

“‘Yes, General, I see. But you do not call that securing my debt, do you?’

“‘Why, certainly.’

“‘In what way?’ I inquired.

“‘By changing securities, to be sure. You hold

me now for the demand, instead of the maker of that note, and I think I am entitled to considerable credit for the manner in which I managed that matter for you. When you have more debts of the kind to collect, I will cheerfully aid you to the extent of my ability,' said he.

"The sincere and business-like manner in which he said this, was perfectly amusing to me; and although, from the general's circumstances just then, my security was not the most satisfactory, I replied to him :

" 'General Marvin, you are a most excellent financier—I think you are improving—but allow me to inquire to what length of time the new security extends the payment ?

" 'O, indefinitely, indefinitely, Mr. Sibley, with usual interest.'

"More prosperous times in his affairs came round at last, and my debt, principal and interest, was fully paid, for he was an honest, high-souled man."

Dudley Marvin was always highly esteemed by his professional brethren, and by the judiciary throughout the State. Whenever he arose to address the court or jury, he commanded the most profound attention. Always dignified and composed; always master of himself and his case.

He died at Ripley, in June, 1856, in the 71st year of his age. The intelligence of his death was announced in the various courts, and by the press of the State, in language that exhibited the high position which he held in the mind of the public.

## ALBERT H. TRACY.

His Character among the Lawyers and Legislators of his day.—The Condition of Affairs when he entered Public Life.—His Endowments.—His Father a Distinguished Physician.—Albert Commences Study of Medicine with him.—Removes to Madison, New York.—Discontinues the Study of Medicine and Commences the Study of Law with his brother, Honorable Phineas L. Tracy.—Removes to Batavia, New York.—Is admitted to the Bar.—Removes to Buffalo and Commences Practice.—Two of his earliest cases described.—The Plea of Infancy.—Prospects of Defeat.—The Discovered Family Record.—Defeat Turned to Victory.—The Condition of Politics during the first years of Tracy's Practice.—He is Elected to Represent his District in Congress.—Events of the Sixteenth Congress.—Contest over the Application of Missouri to become a State.—Mr. Tracy engages in it.—Henry R. Storrs.—Robert Monell.—Nathaniel Pitcher.—Mr. Tracy as Speaker.—Sharp answer of Gerard.—Tracy's Speech on the Missouri Question.—Compromise of Mr. Holmes.—Admission of Missouri.—Mr. Tracy Re-elected to Congress.—Becomes a Friend of Martin Van Buren.—The Federal Party.—Van Buren as a Politician.—Tracy in the Social Circles of Washington.—Van Buren's Proposals to Tracy.—Governor Clinton offers to appoint him a Judge of the Supreme Court.—The Offer Rejected.—Is urged to become a Candidate for United States Senator.—Reasons for Declining.—Tracy Elected to the State Senate by the Anti-Masons.—Great Victory of the Democrats in 1829.—Tracy Sustains the Anti-Masons in the Senate.—Is aided next year by Seward, Maynard, Talmadge, and Cary.—Character of Trumbull Cary.—Tracy continues in the Senate eight years.—Character and number of the Legal Opinions written by him while a Member of the Court of Errors.—Retires from the State Senate.—Tracy a Candidate for United States Senator.—His high Claims for the Office.—The Whigs sustain N. P. Talmadge, a recent Democrat.—Talmadge Elected.—Tracy unites with the Democrats.—His Reasons.—Would have been Vice-President instead of Tyler, had he remained with the Whigs.—General Harrison offered Tracy a place in his Cabinet.—Declines.—Returns to the Practice of his Profession.—Thomas C. Love.—Tracy Retires from the Bar.—His Life in Retirement.—His Love of Literature.—Tracy's Opinion of Bulwer as a Writer and Critic.—His Conversation with a Friend as to Bulwer's Remarks upon Young's Night Thoughts, Childe Harold, &c.—Tracy's Opinion of Scott as a Poet.—Tracy as a Conversationalist.—Opinions of Webster, Cass, and others, as to his Conversational Powers.—Tracy as a Critic.—Mr. Dorsheimer's Description of his Characteristics.—Tracy's Personal Appearance.—Failure of his Health.—His Death.

AMONG the eminent lawyers, as among the legislators of the active period of his day, Mr. Tracy occupies a place in the foremost rank. He entered the political field when very young, to contend with men



of the highest capacity—with the great partizan leaders of that period, and so successful was he in the contest, that his own fame has been entwined with theirs. He entered public life, when partizan strife was peculiarly acrimonious, and he showed himself above the narrow spirit of the common politician. There was in his nature a calm philosophy which never forsook him in the sharpest controversies, which contributed greatly to protect his genius, imagination, taste, and sensibility from the dangerous influence of public station—a philosophy which threw a hue of poetry over politics, softened the asperities of his nature, and covered his faults.

His endowments were of a useful, and in a measure commanding character. He possessed sound sense, ready memory, and vast industry, a thorough acquaintance with business in its principles and detail, a thorough and perfect knowledge of the law, theoretically as well as practically, while he understood politics from participating in their details.

His mind was of a very high order, and in many respects original; he was never highly distinguished as a public speaker, yet in that capacity, he attained a respectable position. But his conversational powers were unsurpassed. In private conversation, his language—indeed his oratory, was graceful, natural—abounding in flowers of various hues mingled with the closest reasoning. So that his arguments—his narratives, seemed spontaneously to clothe themselves in the most pointed terseness—and anon, in the most luminous statement, and then, in the most apt and felicitous antithesis. This rendered him a pleasing and valuable companion, and an ornament to the polished society in which he moved. His rare ability as a writer is evinced in the various documents, legal opinions, and other works, which he has left behind him.

Albert H. Tracy was born at Norwich, Connecticut, June 17th, 1793. His father was Doctor Philemon

Tracy, one of the most distinguished physicians and surgeons of his day. It was his ardent desire that Albert should follow the profession of medicine and surgery; accordingly, when he had completed his classical education, he commenced the study of medicine with his father, who spared no pains or expense in storing the mind of his son with a complete and perfect knowledge of all the learning of his profession. But when nearly fitted for his degree in medicine, he visited Madison, N. Y., where his brother, the present Hon. Phineas L. Tracy, then a practicing lawyer, resided.

Pleased with the country, and stimulated with the novelty of that then recently settled region, he determined to make it his future home. The profession of medicine never quite suited the taste of young Tracy. Its dry and endless nomenclature,—the beautiful, but abstruse arrangement of bone, muscle, nerve, sinew, vein and artery, so attractive to many, gave little interest to him. The heart-stirring energy of forensic struggles, the philosophy, the reason, and the logic of the law, attracted him, and he determined to abandon the profession of his father, and enter the legal profession. Accordingly, he immediately entered the office of his brother and commenced the study of law.

He remained at Madison a year or two, when his brother removed to Batavia and Albert accompanied him, where he completed his legal studies, and in May, 1815, he was admitted to the bar, and immediately went to Buffalo, opened an office, and commenced practice. Buffalo was then but the remnant of a thriving village, having been burned by the British during the war which had then just closed. When young Tracy first looked upon its desolate streets, it appeared as though the angel of destruction had passed over it. But it required no prophetic tongue to convince him that its desolation must soon give way to prosperity, wealth and commercial ac-

tivity, and this determined him to make it his home for life.

His many amiable qualities, his sound practical good sense, his industry, and capacity, soon became known to the citizens of Buffalo, and in a short time he gained the reputation of a prudent, sagacious counselor, a skillful and successful advocate. Such was his success, that when, at the end of three years, he visited Albany for the purpose of taking his degree as a counselor, he had acquired several thousand dollars in money earned by his profession.

One of the earliest cases which Mr. Tracy conducted, was an action of ejectment for the recovery of a piece of land containing some seventy five-acres, situated not far from the present site of the New York and Erie depot. The matters in dispute were all intricate questions of law and fact. It was tried in Buffalo, in the summer of 1816. In conducting this case, the young attorney exhibited such perfect familiarity with the laws of real estate, such skill in harmonizing and adjusting the evidence against him, that he not only carried the case but gained much distinction as a real estate lawyer and advocate.

Another incident in his early practice is related of him, which exhibits his indomitable energy and perseverance. An action had been commenced against a young man residing at Hamburg, by his uncle, for the recovery of a large sum of money which he claimed was due on an alleged contract made between the uncle and nephew. Mr. Tracy was consulted by the defendant, and he soon satisfied himself that the claim made by the uncle was unjust and dishonest; but as there seemed no way to avoid the contract, Mr. Tracy was on the point of advising his client that he had no available defense to the claim of the plaintiff, and that he must submit to a judgment, however ruinous it might be to him, when the lawyer accidentally learned that at the time of making the alleged contract, the defendant was an infant under twenty-

one years of age, lacking one month of his majority. Under these circumstances, Mr. Tracy felt justified in interposing the defense of infancy, and it was duly set up in the plea.

On the trial, the mother of the defendant testified that he was born on the 12th day of October, 1794. After the lady retired from the witness box, court adjourned until the next morning, it being near night. During the evening, Mr. Tracy learned that the opposite party had several witnesses subpoenaed to prove that the mother was mistaken as to the year in which her son was born; in fact, to prove that he was born on the 12th day of October, 1793, instead of 1794, as the mother had testified. This was an unexpected attack, and there seemed no escape from defeat.

After consulting with his client and his friends for some time, inquiring minutely into all the circumstances of time and place, it suddenly occurred to the mother of his client that there was an old lady, a relative of the family, who lived near her at the time of her son's birth, who had in her possession a family Bible containing an entry of the time it occurred, made in her own hand the very next day. It was now ten o'clock in the evening; the old lady resided twenty-five miles from Buffalo; if she could be produced with her family record, the defendant would be saved from defeat. Accordingly, a subpoena was immediately prepared; the defendant and a friend started for the residence of the witness.

Soon after the opening of court in the morning, he appeared in the court room with his witness, Bible in hand. Tracy examined it a moment. The record had every appearance of authenticity, being as venerable in appearance as was its owner; and, what was still better, the old lady was exceedingly intelligent, clear and distinct in her recollection of facts. She was immediately placed upon the stand. She fully substantiated the validity of the record, the making of the entry, and the time when it was made; in addition to



which she testified to other circumstances which so strongly corroborated the testimony of the mother, that the defense became triumphant, notwithstanding the powerful attempt which the plaintiff made to overthrow it.

At no period in the history of the State has the collision of parties been more sharp and fierce than it was in the first year of Mr. Tracy's practice. It was the long-contested struggle between the Federal and Republican party, and he entered the contest an ardent partizan of the latter. His talents, his energy, his high reputation as a lawyer, gave him at once a commanding influence in the politics of the day, and, young as he was, he became the acknowledged leader of his party in his Congressional district, which at that time extended from Lake Erie to Cayuga Lake.

In the autumn of 1818 he received the nomination for representative in Congress from that district, although then but a trifle over twenty-four years of age. He was elected, and entered the National Legislature on the 6th day of December, 1819, at the opening of the sixteenth Congressional session.

During this session, the great contest engendered by the application of Missouri to become a State, agitated both branches of Congress, and shook the Republic from center to circumference.

The fifteenth Congress reconvened on the 16th day of November, 1819, and Missouri immediately applied to that body to be admitted into the Union as a State, presenting a copy of her constitution, by which negro slavery was permitted. A scene of excitement followed, which at that period was unparalleled in the history of the nation. It was the first great collision between the North and the South. The Missouri bill with the slavery clause in it, was bitterly opposed by many of the northern members, particularly by General James Talmadge, from New York, who introduced a bill as an amendment, which provided, among other things, that the introduction of slavery



or involuntary servitude, be prohibited in the State to be admitted, except for the punishment of crimes, &c. A portion of the bill passed the House, but a disagreement with the Senate occurred, and the bill for the admission of Missouri failed.

On the 6th day of December, following, the sixteenth Congress assembled, and the contest over the admission of Missouri as a slave State was renewed with increased bitterness. Mr. Clay was speaker of the House; he was in no sense a friend to slavery, and yet he was in favor of admitting the Territory without any restriction as to slavery. The President, Mr. Monroe, though he acted with great discretion, favored the admission of Missouri with a slave constitution.

Among the representatives from New York in this Congress, were the late Henry R. Storrs, of Oneida, Robert Monell, of Chenango, Nathaniel Pitcher and John W. Taylor, all of whom were eminent and distinguished lawyers. The members from New York, instructed by the Legislature, with one or two exceptions, stood firmly in favor of restriction. Mr. Tracy was one of the youngest members in the House, having barely arrived at the age when by the Constitution he could be admitted to a seat in it; but in this contest he took an important, active, part. He did not aspire to become a wordy champion, an indefatigable Ajax of the wordy warfare which was raging around him, and yet he occasionally occupied the attention of the House; but he did not speak for momentary effect; he labored to dispose of the great question in a manner which would vindicate the action of the House to posterity.

It was one of his maxims that "he who talks much in public, must often talk in vain." He often related the anecdote of the member of the Chamber of Deputies, who, after a very long and grandiloquent speech, asked Gerard what he thought of the Assembly.

"I think," said Gerard, looking very gravely at

the conceited member, "I think there are a great many fools among us."

The anxiety which so many men have to hear themselves talk in public, was once alluded to by a very sensible and well-educated member of the New York Assembly, in a letter to a friend, in the following manner :

"What can I do in the midst of a crowd of garrulous, conceited men, who believe themselves to be born great orators, and who, therefore, gabble on all questions before the House, without understanding in the least what they talk about?"

"Mr. Speaker," said Mr. Tracy, on one of the occasions on which he addressed the House, "my friend, Mr. Taylor, whom I may add, so ably and eloquently represents the State of New York, has said on this floor, that history will record the decision of this day as exerting an influence for centuries to come, over the population of half our continent; and sir, it has well been said by him, that if we reject this amendment, and suffer this evil to strike its roots so deep into the soil that it can never be removed, we shall furnish some apology for doubting our sincerity, when we say we deplore its existence. May I add, sir, that the words of the distinguished gentleman are prophetic, that we are called upon now to act with promptitude and decision upon this question; that posterity will hold us responsible if we consent to entail this evil upon it; an evil which can only be eradicated hereafter by civil commotion and perhaps bloodshed. The distinguished member from Maryland, Mr. Pinkney, admits that slavery engenders pride and insolence in him who commands, and inflicts intellectual and moral degradation on him who serves, that it is abominable and unchristian. Then why should we not apply this restriction? Why should we hesitate to prohibit such an institution in a State whose geographical position alone ought to exclude it?"

It may well be said that the words of Mr. Tracy, as well as those of Mr. Taylor, were indeed prophetic. The former lived to see the strife and dissension which characterized the admission of Missouri, repeated with accelerated force—to hear the prelude to that fearful storm of civil war which broke over the republic.

The contest over the admission of Missouri, continued with unabated heat, until Mr. Thomas, from Illinois, introduced into the Senate the celebrated measure known as the Missouri Compromise, which was adopted by that body. When, however, it was first acted upon in the House, it was rejected by a vote of 159 yeas to 18 nays. The Senate refusing to recede from its amendment, and the House decisively insisting upon its disagreement, the Senate asked a conference, which request was acceded to. The committee of conference was so framed that it gave the Anti-Restrictionists a decided majority. Mr. Tracy was appointed on such committee, but he declined to act, and another member was appointed in his place.

On the 20th of March, 1820, Mr. Holmes, from Massachusetts, reported from this committee that the Senate should surrender its combination of Missouri with Maine, and the House should abandon its attempt to restrict slavery in Missouri, and that both houses should concur in passing the bill to admit it as a State, with Mr. Thomas' restriction or proviso excluding slavery from all territory north and west of the new State. And thus the great compromise measure of 1820 passed both branches of Congress. It was the great measure of the sixteenth Congress, and with its settlement the nation forgot the turmoil and dissension which it created, and moved forward in unsurpassed prosperity.

Mr. Tracy represented his district in Congress until the year 1824, when he declined a renomination. This was an interesting and peculiar period in the history of the nation. During most of this time

Martin Van Buren and Rufus King were in the United States Senate from this State, while in the House the State was represented by men of the most distinguished ability.

The great Federal party—the party which was the exponent of the political theory of Hamilton—and which, since the foundation of the government, had always been powerful, often victorious—had committed the great error of opposing the late war with England.

The conduct of statesmen and legislators, even the very greatest, and those who are reputed the most successful, is so frequently at variance with the obvious suggestion of common prudence, that they may well be deemed to have been guided by some strange fatality. Thus with the statesmen who opposed the war of 1812. As a matter of policy it was a fatal mistake, and their party now stood on the very brink of dissolution, while the superstructure of the Democratic party in this State was being laid by Martin Van Buren and his compeers, who were then calling around them those whose hatred to the Federal party was stimulated by the political doctrines and dogmas of Jefferson.

There have been very few men in the world, certainly very few in our own country, who possessed the natural as well as the acquired political sagacity of Martin Van Buren. He understood the peculiar art of analyzing not only the external customs of men, but also of penetrating their deeper and more hidden interests. He had much of the subtle and astute policy of Richelieu, and, in the times of that great man, would perhaps have been equally successful. His career, though it closed in misfortune, evinces a consummate knowledge of human nature.

As a diplomatist and statesman his connexion with party, and his habits of viewing subjects in reference to party aggrandizement, too often caused the statesman to be lost in the mere politician. But this was a



fault which he showed in common with other American statesmen.

When Mr. Tracy first appeared at Washington, his refined taste, his elegant manners, and the charm of his conversation, rendered him welcome in its polite and refined circles. He at once took a high social position, while his devotion to all the details of his Congressional duties raised him to distinction as a legislator. Among those who were early attached to him was Martin Van Buren, then "the rising statesman of New York." It was his desire to induce Mr. Tracy to join the great party which was soon to control the power of the nation. The judicious and penetrating statesman perceived that Mr. Tracy's abilities, his various research, his facility of expression, his energy of character, his many claims to popularity among the people, would be of importance to any political party, and he was, therefore, not without selfish motives in cultivating the acquaintance of the young man. Though Mr. Tracy could not concur with Mr. Van Buren's political sentiments, yet there ever existed a warm friendship between them.

Governor Clinton, who duly appreciated the judicial abilities of Mr. Tracy, signified his desire to appoint him a justice of the Supreme Court, to fill a vacancy which would occur in the event of his accepting the appointment; but he declined the position for reasons which were entirely satisfactory to the governor.

In December, 1825, Mr. Tracy was urged by his friends to become a candidate for the office of United States senator in place of Rufus King, whose term in the Senate was about to expire. He at first yielded, but on learning that his friend Van Buren was to be the opposing candidate, he declined.

In the autumn of 1829, Mr. Tracy was nominated by the Anti-Masonry of the eighth Senatorial district, for State senator. This was a peculiar period in the political history of the State. Anti-Masonry, under



the lead of such men as William H. Seward, Frederick Whittlesey, Thurlow Weed, Albert H. Tracy, Trumbull Cary, Thomas C. Love, George W. Patterson, John Young, William H. Maynard, and many others, had assumed the dimensions of a powerful party in the State, especially in the western counties. As was said by another, during the existence of the Anti-Masonic party, "the tenacity of purpose which marked the Anti-Masonic counties, seem to indicate a reliable steadiness which it was almost hopeless for their opponents to attempt to change."

The fall of 1829 saw the Democratic party victorious throughout the State. In all the Senatorial districts except Mr. Tracy's, Democratic senators were elected; while of the one hundred and twenty-eight members of Assembly then elected in the State, one hundred and four were Democratic. Mr. Tracy entered the Senate with his party greatly in the minority, but his long experience in Congress, and his unquestioned ability, gave him a high position in that body, and he continued to uphold there, the fortunes of his party against the most overwhelming opposition. When the next session opened, he found himself surrounded by many political friends, some of whom were the ablest men in the State. He was cheered and sustained by William H. Seward, William H. Maynard, Trumbull Cary, Nathaniel P. Talmadge, and others. Messrs. Seward and Maynard have frequently been mentioned in other parts of this work. It is proper to add that Mr. Cary was a distinguished and successful merchant of Batavia, who for many years occupied a prominent position in the politics of the State. He was a gentleman in the true acceptation of the term, a business man of great energy and ability, fortunate in all the enterprises of his life; he retired many years before his death, from public life and from business, enjoying in dignified tranquillity the fruits of his well earned success. He represented the county of Genesee with

much ability in the Legislature of 1828, and he entered the Senate of the State in 1830, to occupy a highly respectable and responsible position. He died in the year 1869, at Batavia, at an advanced age, greatly respected and much lamented.

While Albert H. Tracy was a member of the Senate, that body constituted the court for the Correction of Errors—the court of dernier resort of the State. He remained in the Senate eight years, and was regarded as one of its most distinguished members. Though he often took a part in the debates which occurred through that exciting period,—though he introduced many bills which subsequently became laws, he won his chief distinction by the learned and elaborate opinions which he wrote as a member of the Court for the Correction of Errors.

During his Senatorial career, he wrote no less than one hundred and fifty legal opinions; most of them were published, and will be found in the legal reports of the State, from the ninth to the sixteenth of Wendell, with those of Chancellor Walworth, Chief Justices Savage and Nelson, and Senators Seward, Maynard, Foster, Benton, Talmadge, Todd, Edmonds, Birdsell, and other distinguished senators of the State.

These opinions of Senator Tracy have been greatly admired and held in high esteem by the legal profession for their severe logical acumen, their legal learning, their forcible and elegant style of judicial argument.

In the case of the Delaware and Hudson Canal Company *v.* Dubois, reported in 15 *Wend.*, 106, Lieutenant-Governor John Tracy, Chancellor Walworth, and several senators prepared elaborate and strongly written opinions; to which Senator Tracy felt compelled to dissent. His dissenting opinion is written with such unquestioned modesty, with such marked ability, that the legal student and practitioner is struck with its learning and power.

In the case of *Hawley v. James*, 16 *Wend.*, 92,

after the great and powerful argument of John C. Spencer, Mr. Tracy wrote an opinion which exhibits how thoroughly and perfectly he understood all the difficult and intricate questions involved in the case.

The opinions written by him in the cases of *Allen v. Addington*, 11 *Wend.*, 374; *Coster v. Lorillard*, 14 *Wend.*, 278; and the *People v. Haynes*, 14 *Wend.*, 564, have been the subject of much interest to the legal profession, and to the judiciary of this and other States. While these opinions enrich the learning of the legal profession, there is no parade of learning, no unseemly pride of opinion. They exhibit profound research and thought, they abound in frequent quotations from ancient and modern authorities and precedent, yet there is no pedantic display of precedent or argument. For Mr. Tracy well knew that argument from precedent alone, is, in general, the weakest and the most tedious of all arguments. It often dazzles and overawes instead of enlightening and instructing.

It has been said by those who knew him best, that he himself never regarded these opinions with any particular favor, certainly not with any vanity.

After retiring from the Senate, he never again held any official position. As has been said by another, "In 1839, Mr. Tracy was a candidate for the United States Senate, a distinction which he greatly desired. Mr. N. P. Talmadge was his opponent for the party nomination. This gentleman was then in the Senate, to which he had been elected by the Democrats. He had separated from his party upon the financial questions then before the country, and motives of policy induced the Whig members of the Legislature to prefer him to Mr. Tracy, who had been generally looked upon as the choice of his party. Soon after this event, Mr. Tracy ceased to act with the Whigs. His disappointment at failing to secure the senatorship is supposed to have alienated him from his political associates." Notwithstanding the distinguished writer from whom the above is quoted has

given other reasons than disappointed ambition for Mr. Tracy's alienation from the Whig party, yet, as in those days, ambition was one of Mr. Tracy's faults, it may well be supposed, that the loss of the high place he sought, was at least a paramount reason for dissolving his connection with a party in which he had so long been an acknowledged leader. That this was the case, certainly does not tarnish his fame or reputation.

It was generally conceded that he had peculiar claims to the Senatorship, that his eminent abilities and rare accomplishments, would render him an ornament to the august body in which he desired a seat; that his long service and untiring devotion to the Whig party, was of itself almost a peremptory reason for his promotion to it; that he had never yet been rewarded for those services, nor obtained for his abilities the full and extensive fields they deserved. Then again, his antagonist had but recently left the Democratic party, while Tracy's allegiance to the Whig party, and the party from which it originated, was life long. He had been strongly solicited, and that too with offers of high distinctions by the great leaders of the Democratic party in the nation, to unite his fortunes with theirs, at a time when old parties were changing and new political relations were being formed, yet he had stood firm and unswerving—had adhered to the fortunes of the Whig party and its partizans through all vicissitudes. It would be strange, indeed, if a man's fealty to a party under such circumstances should remain unshaken. The personal friendship which had existed for many years between Mr. Tracy and Mr. Van Buren, may have influenced him in leaving his party; while his dissent from certain financial policies of that party, may have operated upon his mind in making the change.

Had he continued with the Whig party, his high character, personal worth, abilities and influence, would have given him, had he desired it, a high posi-



tion in the government. Thurlow Weed remarked at the time of Mr. Tracy's death, that had he remained with the Whig party, he would have been nominated in 1840 for vice-president, and would of course have succeeded General Harrison in the executive chair of the nation. When, by the death of Harrison, Mr. Tyler became president, he offered Mr. Tracy a place in his cabinet, but the offer was declined by him, and he retired forever from the pitiful shifts and evanescent fame of the politician.

It has been said of Mr. Tracy, that he was never delighted with the practice of the law, although he was actively engaged in it until about the year 1842. For many years, the late Thomas C. Love, of Buffalo, was his law partner. Mr. Love was an eminent lawyer, a prominent and distinguished politician. He was one of the early leaders of the Anti-Masonic party in the State.

In the year 1836-7, he represented the thirty-second Congressional district of the State in Congress. He was appointed district-attorney for the county of Erie in 1829, and he discharged the duties of that office with great ability for the term of seven years, when he was succeeded by the late George P. Barker. Among the distinguished law firms which existed in Buffalo, few, if any, have left a more honorable record than that of Tracy & Love.

As has been said of Mr. Tracy, by an eminent lawyer of the Buffalo bar, "With too much self-restraint, indeed, too severely intellectual, to succeed in the more distinguished role of an advocate, he brought singular qualifications to the plainer labors of the profession. It would be hard to imagine a better counselor." Hence, before the court in banc, in conducting a purely legal argument, his ability was generally acknowledged, and, as we have already seen, he knew how to be successful before a jury. But this part of the practice was distasteful to him, particularly in the latter part of his professional life. Doubtless, he was



instigated by some such feelings as prompted Lord Brougham to remark, that it was "a lawyer's duty to save his client by all expedient means—to protect that client at all hazards and cost to others, and, among others, to himself, and he must not regard the alarm, the suffering, the torment, the destruction which he may bring upon others; and for that reason, I cannot fancy that practice."

Mr. Tracy having retired from the bar, and from the political field, spent the remainder of his days in retirement, from whence, as Lucretius has said: "He could behold from the quiet and safe temples of philosophy, the great crowd rolling below, wandering, confused, erring, seeking to and fro the *viam vitæ*, wasting days and nights in the industrious pursuits of wealth and honor, in the vague hope to enjoy them when possessed."

Fortunate in his business relations, he accumulated a large property, and his home was cheered and enlivened by those intellectual refinements which a mind like his naturally seeks. Books and paintings, the recondite productions of great and gifted writers—the works of literary men of all ages enriched his library, and were his constant companions. He possessed that nice and cultivated taste which enabled him to keenly relish their beauties. As Lord Orrery said of the elder Pliny, "He was numbered among the chief ornaments of the society in which he lived. He cultivated literature—he loved men of learning;" and it may be said that Mr. Tracy drew such men to him by a natural and pleasing attraction.

Like many who have been distinguished at the bar and in halls of legislation, Mr. Tracy was fond of works of fiction. His mind delighted in works of genius, on whatever soil or in whatever age they came forth, and poured out their fullness. He understood the dignity, rights, and pride of creative imagination. He had no pedantry—no fastidiousness. Wherever a

gem of thought glittered—wherever a keen and philosophic argument appeared—there he paused, and inhaled drafts as from Pierian springs.

Among modern novelists, he valued Scott and Bulwer the highest. The metaphysical disquisition—the learned and elegant colloquy—the keen and searching criticism which abounded in the works of the latter were always attractive to him.

Some years before his death, a friend from Albany called upon him, and, in the course of conversation, the works of Shelley were mentioned.

“Do you know,” said Mr. Tracy, “that Bulwer has the ablest criticism upon Shelley’s poems of any living writer?”

In proof of this assertion, he took down Pelham, and read the following extract :

“The writings of Shelley would furnish matter for a hundred volumes; they are an admirable museum of ill-arranged curiosities; they are diamonds awkwardly set, but one of them in the hands of a skillful jeweler would be invaluable. The poets of the future will serve him as Mercury did the tortoise—make him sing sweetly when he’s dead.”

Then turning to the student, he said :

“Here are some of his comments upon Young and Byron, which for their liberality, their thorough comprehension, and their exquisite beauty, are unequaled.”

Mr. Tracy then read the following :

“But the conception of the Night Thoughts for a didactic poem is unutterably grand. An aged and bereaved mourner stands alone with the dead—the grave his scene—the night his canopy—and time, death, eternity—the darkest, the loftiest objects of human hope and human intellect—supply his only themes. Here, at this spot and at this hour, commencing his strain with a majesty worthy of its ends and aims, he calls upon

“ Silence and darkness, solemn sisters, twins  
 From ancient Night, who nurse the tender thought  
 To reason, and on reason build resolve,  
 That column of true majesty in man,  
 Assist me: I will thank you in the grave—  
 The grave your kingdom—’

“ Following the course of the sombre inspiration that he adjures, he then passes in a vast review before him, in the presence of the stars, and above the slumbers of the dead, the pomp and glories of the world—the veiled and shadowy forms of Hope—the dim hosts of Memory.

“ ‘The spirit walks of each departed hour,  
 And smiles an angel, or a fury frowns.’

“ Standing upon the grave, the creations of two worlds are around him, and the grey hairs of the mourner become touched with the halo of the prophet. It is the time he has chosen wherein to teach us to dignify and consecrate the lesson; it is not the mere human and earthly moral that gathers on his tongue. The conception hallows the work, and sustains its own majesty in every change and wandering of the verse. And there is this greatness in his theme—dark, terrible, severe—hope never deserts it! It is a deep and gloomy wave, but the stars are glassed on its bosom. I think the Night Thoughts are a more sustained, solemn and mighty poem than Childe Harold; but when I recall all the works that accompany the latter, products of the same teeming mind, the dark tale of Lord, the sweetness of the Prisoners of Chillon, the daring grandeur of Cain, and above all, the rich, nervous humor—the deep mystery of the living world that breathes a corporeal life into the shadows of Don Juan, I am at no loss to allow Byron to be a greater genius and a greater poet than Young.”

“ There,” said Mr. Tracy, laying the book on the table, “ where in the language of criticism can you

find anything more pleasing than this? though I cannot fully agree with all the assertions which I have read, still, I regard them as the productions of a great master mind, comparing, weighing, and balancing the thoughts and sentiments of other master minds. It is Herschel viewing Herschel—Jupiter glancing at Jupiter—intellect meeting intellect.”

“Well, Mr. Tracy,” said the gentleman, “I agree with you in regard to Bulwer’s views of Young and Byron. How do you regard Walter Scott as a poet?”

“There is nothing in Scott,” said he, “of the severe and majestic style—or of the terse and fine composition of Pope, or the elaborate elegance and melody of Southey, or of the solemn grandeur of Young, nor the beautiful diction of Byron, but there is in him a medley of bright images, and glowing words, set carelessly together. Besides, in the management of the passions, he has great power. He raises all the most natural and poetical emotions in the most obvious, familiar, and judicious manner. Perhaps his description of scenery is unequalled; such is his power in this sphere, that before you are aware of it, you are gazing where,

“‘Highest of all, white peaks glance,  
Where glittering streamers wave and dance  
Where the wanderer’s eye can barely view  
The summer heaven’s delicious blue;  
So wondrous wild, the whole might seem  
The scenery of a fairy dream.’”

“Here,” continued Mr. Tracy, “is a picture so distinct and complete, finished with soft, natural coloring, and perfect in outline; above which is ‘the summer heaven’s delicious blue.’ Another of Scott’s triumphs is the facility with which he passes from the description of a scene like this, to the color and light of some moral affection, some thrilling and deep wrought emotion.”

“Really, Mr. Tracy,” said the gentleman, “your description of Scott excels Bulwer’s description of Young and Byron;” and the remark is true, for with such conversation as this, Mr. Tracy was in the habit of entertaining his friends. Such conversation as this, caused Daniel Webster, Lewis Cass, and others of that class, to pronounce him the finest conversationalist of his time. In the language of Mr. Dorsheimer, “men get reputation as a conversationalist in two ways,—some by talking themselves, and some by making others talk. Mr. Tracy did both. He was the best of listeners. He would draw you out, if there was anything in you to draw out; if there was a subject about which you knew more than he did, nothing pleased him so well as when he hit upon it. . . . He was a most delightful critic, full of suggestion and fine appreciation, keenly susceptible to the melody of prose and verse.

“Both by habit and mind, he was truly a republican gentleman. He believed in the principles on which our government was founded, and desired that our society should be governed by the same principles. He paid little regard to social distinctions; affected no superiority, and was free from pride of station.

“His conversation derived a peculiar charm from his wide acquaintance with the distinguished men of his day. He knew nearly every American of mark in politics or literature. He seized quickly upon characteristic traits, and by an anecdote would tell you more than you can learn from some biographies. When I knew him he had been so long out of public life that he seemed to regard his cotemporaries as if they belonged to an older generation; he judged them without enthusiasm or prejudice.”

In person Mr. Tracy was tall, standing six feet in his stockings, and he was well formed. His complexion was light; his countenance, if not attractive at first, became so the moment he commenced speaking—then it became as eloquent as his language.



Before leaving Congress his health failed him, and during the remainder of his life, to a certain extent, he was an invalid, "preserving a moderate degree of health by constant care and watchfulness." Early in September, 1858, he was seized by a violent disease. He lingered two weeks, and, on the 19th day of that month, he breathed his last.

That he had many faults is certain—that the common frailties of our nature were frequently conspicuous in him, none will deny—that he had as few of them as men in his station in life usually have, is also true.

## DANIEL CRUGER.

His Relation to the Political and Legal History of the State.—Compared with Professional Politicians.—His Ancestry.—Birth.—His Father Removes to Elmira.—Daniel a Printer's Apprentice at Albany.—A Newspaper Carrier.—Interview with a Great Man.—Meets Burr, Spencer and others on his Route.—Daniel Visits the Assembly Chamber.—Looks with Wonder upon the Great Men before him.—Thinks the Speaker a Greater Man than Washington.—His Youthful Ambition.—It is Realized.—His Apprenticeship Expires.—Commences the Publication of a Paper at Owego.—Removes to Bath.—Commences the Study of Law.—His Marriage.—The War of 1812.—Enters the Service as Aid to General McClure.—Cruger in Active Service.—Ordered to Burn the Town of Newark.—Visits the Town with an Orderly.—Assists the Inhabitants to Remove their Property.—Town Burned.—The Reconnoissance.—The Indian Village.—The Torture of the Gauntlet.—The American Prisoners Released as they are about to undergo the Torture.—Punishment of a Hostile Chief.—Cruger Resigns.—Is Nominated and Elected to the Assembly.—His Re-election.—Chosen Speaker of the Assembly.—Character as Speaker.—Great Legislative Contest.—Cruger Bitterly Assailed.—Is Elected to Congress.—Congressional Career.—Appointed District-Attorney under the large District System.—Professional Character.—The Flaw in the Indictment.—John W. Hurlbert.—Expiration of his Term as District-Attorney.—His Partnership with William B. Rochester.—Cruger's Influence.—His Speech on the Removal of De Witt Clinton.—Again Elected to the Legislature.—Great Legislative Contest over Common Dirt Roads.—Public Improvement of that Day Contrasted with the Present Time.—New York and Erie Rail Road.—Cruger Retires to Private Life.—His Great Energy as a Politician.—His Celebrated Horse Jingle Foot.—Great Feat of Jingle Foot and his Master.—Scheme of the Federal Leaders Overthrown.—Personal Appearance of Cruger.—His Hospitality.—His House the Head Quarters for Judges and Lawyers.—Manner of Opening Courts in the Days of Ambrose Spencer.—Death of Mrs. Cruger.—Cruger's Second Marriage.—Removes to Wheeling, Virginia.—His Sudden Death.

ON the pages which faithfully record the political and legal history of the State of New York, the name of Daniel Cruger must be conspicuous—must be identified with those who once controlled its destinies, and who, having acted their part in the drama of life, long since retired to give room for other actors. He was distinguished at the bar as a lawyer of high capacity—eminent in the political arena for his knowl-

edge of the structure and operation of that machine called society—for his wonderful energy—for his pen, which he wielded with surpassing power, and from which emanated productions whose style was remarkably clear, elegant and forcible—for his skill in partizan drill, and for his great popularity with the people. He was, therefore, eminently qualified for the turbulent times in which he lived ; for at that period, as well as at the present time, there was a class of men, so well described by Burke, to whom a state of order and quiet becomes a sentence of obscurity ; who are nourished into a dangerous magnitude by force of party strife.

To nothing of this kind, however, was Daniel Cruger indebted for the high position and influence which he attained. He was one of those men who are formed by nature to occupy responsible and honorable positions in society.

The ancestors of Mr. Cruger were Huguenots, who, at the massacre of St. Bartholemew, escaped from France. A portion of them reached England in safety, while others fled to Germany, and found a home at Altonia, in the duchy of Holstein ; and others fled to Denmark. That branch of the family from which Mr. Cruger descended, settled in Holstein. His father emigrated to America in 1768, and settled in Sunbury, in the State of Pennsylvania, where, on the 22nd day of December, 1780, Daniel was born.

Soon after the birth of his son, the elder Cruger removed to Newtown, now Elmira, in the State of New York, and engaged in mercantile business.

When Daniel was thirteen years of age, Mr. Webster, one of the earliest printers of Albany, being at Newtown on a visit to some relations, noticing his lively intelligence, his vivacity and activity, induced Mr. Cruger to apprentice his son to him for the purpose of learning the printing business. As Daniel himself was pleased with the arrangement, he willingly accom-

panied Mr. Webster to Albany, and entered his office as an apprentice.

Here he lived for several years, and here he learned the art of printing.

During the first years of his apprenticeship, it was his business to carry the paper of his employer to its patrons. While thus engaged, he often met, on his route, Hamilton, Burr, Clinton, Spencer, Livingston, and other great men, who were then much of their time at Albany.

One morning while toiling up State-street with a large bundle of papers under his arm, he was met by a gentleman, whose person was a little below the ordinary height—slender, but straight as an arrow, with a bright, clear, intelligent face, dressed in a blue coat, dark waistcoat, black small clothes, and dark stockings. This man approached him at a pace that indicated haste.

“Here, boy,” said he, “I would like three or four of your papers.”

“I cannot spare them, sir; they are for subscribers; and I have only just enough to go around,” was the reply.

“But, my boy, I must have them; I am in a great hurry for them, too,” said the gentleman, reaching out his hand to take them.

“No, sir; you can’t have them,” said young Cruger, grasping them tightly in his arms, “Mr. Webster will be displeased, if I let you have them,” and he moved along.

The gentleman looked puzzled.

“Wait a moment, young man,” said he, taking a small book from his pocket, and writing something on a piece of blank paper, which he handed to the boy with a half a dollar, saying:

“Give me four of your papers, take that note, and return to the printing office; hand it to Mr. Webster, and if he does not say you did right in letting me have the papers, call at 86, State-street, and I will satisfy

you," and, taking the papers, he walked quickly away.

Cruger returned to the office. Mr. Webster was sometimes harsh and violent, and he had some fears for himself.

"Well, sir; what have you come back for?" said his master, in a tone which exhibited his displeasure.

"Because a man met me just now on State-street, and urged me to let him have four papers, and as I have not enough to go around, I've come back after more."

Mr. Webster's face indicated a storm.

"What did you let him have the papers for? Hav'n't I told you, time, time, and time again, not to let anybody have papers, but subscribers? What have you got to say for yourself?" said Webster, greatly displeased.

"The gentleman gave me this note, and told me to hand it to you, and that it would be all right," said Cruger.

Webster took the paper, opened it, and read as follows:

"*Dear Sir*—I met your boy, this morning, with the papers. I was in a great hurry for four of them. He refused to let me have them, and I took them much against his will; he is a bright, faithful boy—did his duty manfully, and you will excuse him, and charge the wrong to me.  
A. HAMILTON."

"Why, good gracious, boy, you did just right, after all. Do you know that you have been talking with Alexander Hamilton, this morning, Daniel,—one of the greatest men of the times? You did right—you did right, sir."

Daniel replenished his bundle, and once more started on his rounds.

Occasionally, Daniel would visit the Assembly chamber during the session of the Legislature, and



gazing on the wise men assembled there, he wondered where they all lived, how they learned so much wisdom—how they found out the way to make such elegant speeches, and to use such great, splendid words. Like the French mathematician, described by Fontenelle, who inquired of some Englishmen that were visiting him, whether Newton ate, drank, and slept like other men, young Cruger wondered whether these men, at home in their own houses, lived, acted, and talked as other men did; whether they always wore their hair so elaborately done up in pigtails, and always had on those great, bright, shoe buckles, and whether some of them didn't live in great palaces, somewhere.

But when he cast his eyes up to the chair, and beheld the man who occupied it, and who ruled all the great men in the Assembly, he regarded him with feelings of awe. Certainly, thought he, that man must be greater even than Solon, Aristides, Themistocles, Pericles, and the other illustrious personages of whom he had read in Plutarch's Lives; he even thought that Washington himself could not have been a much greater man, only he dressed in uniform and had a sword, while this man wore citizen's clothes, and had nothing but a small mallet in his hand. Then ambitious hopes and desires began to throb in his bosom, and he ventured the thought, that perhaps, if he spent his leisure time in study, conducted himself with propriety, and was industrious, he might some day be honored with a seat in that room, and talk so eloquently that everybody, even the great man in the chair, would listen to him with as much attention as they did to the men whom he heard talk there. And thus the first faint dream of ambition began to leave its impress on his mind—which, as it deepened, stimulated him to that action and perseverance, which in a few short years placed him in that chair on which he looked with such feelings of awe.

He commenced his education in that school of

practical knowledge and vigorous intellectual developments,—the printing office,—where so many great men of the nation have prepared to enter places of renown and honor.

In the office with him, were the late Mathew L. Davis and the late Jesse Buell, both of whom, in after life, were his associates in far different scenes.

Having served his time with Mr. Webster, and rejoicing in a practical knowledge of the art preservative, he settled at Owego, and established the "Owego Democrat," which was the first journal ever published in that part of the State. He edited and published this paper until the year 1804, when he parted with his interest in the concern. His father having previously settled at Bath, young Cruger now made that village his home. For a time he pursued his occupation there; but the business proving injurious to his health, he renounced it and entered the office of General S. S. Haight as a student at law, with whom he continued until he was admitted to the bar, when he became a partner of the general; this was in the year 1806. About this time he was married to Miss Hannah Clement, a niece of the late Henry A. Townsend, of Bath, a lady of great refinement, intellectual culture, and graceful accomplishments, who subsequently was as much admired in the polished and refined circles at Washington and Albany, as her husband was esteemed and honored among the gifted statesmen and lawyers with whom he associated in those cities. His ability as a lawyer soon exhibited itself, and he became, within a few years after the commencement of his practice, one of the leading lawyers at the Steuben bar.

He continued to practice with increasing success, until the year 1812, when the war with England created a martial spirit throughout the country, which caused many young men to leave their occupations and enter the service of their country. Among these was Mr. Cruger. He accepted a position on the staff of General

McClure. This officer was fortunate in the selection of his staff. He called to his side some of the most distinguished young men in western New York, who subsequently occupied the very highest places in its legal and political history.

Soon after this, he moved with General McClure's brigade to the northern frontier. Some time after reaching the seat of war, the general, understanding that certain orders directed him to burn the town of Newark, in Canada, took the necessary steps to obey. Major Cruger and Mr. Spencer, however, dissented from the view of the order taken by General McClure, and objected to burning the town. About this time Mr. Spencer was called home by sickness in his family, and Mr. Cruger stood alone in his opposition. The general, therefore, prepared to carry out his construction of the order, and Major Cruger was ordered to enter the town with a flag of truce, and inform the "inhabitants of the threatened conflagration." He obeyed the order, entered the town with an orderly, and after giving the usual notice, he and his orderly assisted the inhabitants to remove their effects ; and the town was soon in flames.

Soon after this he was placed in command of a detachment of soldiers, and two companies of Indians under the command of the celebrated chief, Red Jacket, with orders to proceed into the interior of Canada on a reconnoissance. The movement was attended with great danger from ambuscades of hostile Indians and attacks from heavy bodies of British troops which could be thrown forward against them. But Major Cruger was not a man to shrink from danger, and with his little command he carefully, successfully, and skillfully obeyed his instructions.

On the 2nd day of October they approached a small Indian village. Hearing an unusual shouting, yelling, and whooping, Cruger halted, and sent forward scouts to ascertain the cause of the commotion. After a short absence they returned, and reported that

the Indians had three American soldiers whom they had captured, and were about compelling to run the gauntlet. This is an ordeal of Indian invention, conducted in the following manner: Two lines are formed about six feet apart, consisting of Indians and squaws, each armed with a whip from three to four feet in length, cut from a tree. Between these lines the prisoners are compelled to run, one at a time, each Indian and squaw striking the man as many blows with the whip as he or she can while he is passing. It is a terrible ordeal; but if the prisoner is quick on foot, and expert in dodging, he can escape with much less injury than a more clumsy person.

On the return of his scouts, Major Cruger moved rapidly forward, reaching the village just as one of the prisoners had run the gauntlet. He was a strong and sinewy man, as fleet on foot as a deer. He was placed at one end of the parallel lines, with his shoulders bared, and when the word "go" was given, he started. In his progress he ran so close to one of the lines that he frequently knocked over men and women; this brought him so far from the opposite line that those in it could not strike him with their whips. And thus he passed through the army of whips without receiving the least injury. This trial, however, was not satisfactory to the Indians, and they were preparing him for another, when they were surrounded by the American forces, and the captives released.

One of the released prisoners, who had suffered much during his captivity, borrowed a hickory ramrod from one of the American soldiers, and walking up to a gigantic hostile chief, whose shoulders had been bared in order to give his arms full play in striking the unfortunate victim of the gauntlet, plied the weapon on the bare skin of the Indian with such force that great red ridges followed every blow. As the Indian was surrounded by Cruger's



soldiers, he could not escape; and as each blow fell, he sprang into the air uttering howls something between the roar of a lion and the shriek of a panther.

On his return from this adventure, Major Cruger received intelligence that he had been placed in nomination, by the Democrats of Allegany and Steuben, as candidate for member of Assembly, and, as his term of service had nearly expired, he tendered his resignation, and returned home. This was in the autumn of 1813. At this time the population of Allegany and Steuben was so small, that the two counties barely contained a population sufficient to entitle them to a member of Assembly between them.

The election took place, and Cruger succeeded. Daniel D. Tompkins was at the same time elected for the third term, governor of the State. Mr. Cruger's ardent support of the war, as well as the influence which he had exerted during this election, rendered him very popular with the governor, as well as with the Democratic party throughout the State. Among the distinguished persons elected to the Legislature at that election, were Jacob Rutsen Van Rensselaer, and Elisha Williams, from Columbia; William A. Duer, and James Emott, from Dutchess; Samuel Young, from Saratoga; John Savage, from Washington. James Emott was chosen speaker, and Mr. Cruger occupied a place on the Committee of Ways and Means. In the fall of 1814, he was again elected to the Assembly from the two counties of Allegany and Steuben, and so acceptable were his services to his constituency, that in the autumn of 1815, he was re-elected from the same counties. Perhaps no previous or subsequent period in the legislative history of the State has ever been characterized by a more singular and bitter strife than occurred in the Assembly of 1816. It was a bitter collision between the Republican and Federal factions in the House. This memorable Assembly convened January 30th, 1816, and Mr. Cruger was immediately chosen speaker, against



Jacob Rutsen Van Rensselaer, the Federal candidate. So nearly divided were the opposing factions, that Mr. Cruger was elected by a majority of one vote. This majority was gained by the vote of one Peter Allen, from Ontario county, whose seat was contested by Henry Fellows, now a resident of Bath, N. Y. It was in contesting this seat that the acrimonious contest of this session arose. Mr. Allen's vote gave the Democrats a clear majority in the House; and much to the annoyance of the Federalists, a council of appointment was to be appointed by this body. They therefore struggled with desperation to bring the question of the contested seat to a termination before the appointment of this council, while the Democrats struggled with equal energy to postpone any action on the contested seat until the the council was elected; and they succeeded, notwithstanding the powerful efforts of men like William A. Duer, Thomas J. Oakley, and other members of commanding ability in the House.

On the fifth day of February the contest was renewed with intense vigor on both sides, and a Republican council of appointment was chosen by the vote of Mr. Allen. The bitterness with which Mr. Cruger was assailed by the Federalists for a decision made by him upon certain points of order during this contest has seldom been equaled. But he was defended by the Republicans with such ability that the attack of his enemies passed harmlessly over his head, and he was more popular after the attack than before it.

Perhaps few men ever presided over a legislative body with more dignity and ability than Daniel Cruger. He was a man of extensive and profound information, thoroughly conversant with parliamentary rules, quick of apprehension, and he perfectly understood the rules of debate; without any apparent reflection he could apply them to existing circumstances with perfect facility. His courtesy and urbanity in the

chair were proverbial, and, notwithstanding the bitter animosity which governed the partizan strife at that day, he was extremely popular as a presiding officer.

Such was his popularity that, in the autumn of 1816, he was nominated by the Republicans of the then twentieth Congressional district for member of Congress. He was elected, and entered upon his duties December 1, 1817. Here Mr. Cruger occupied a prominent position. His legal abilities and reputation secured him the second place on the Judiciary Committee, where he was subjected to the most incessant and severe labor. On several occasions he addressed the House in speeches which won him much consideration and respect. Although he made no pretensions as a public speaker, yet, whenever he appeared before a parliamentary body, his native good sense—his fund of information—the precision of his positions, always commanded the attention of his auditors.

On the 17th of April, 1815, Mr. Cruger was appointed district-attorney for the Seventh District, consisting of the counties of Steuben, Allegany, and Tioga. As has been remarked, in another part of this work, the office of district-attorney was one of the most important in the State, second only to that of attorney-general. There were at this time twelve district-attorneys, the State being divided into twelve districts, each district embracing within its jurisdiction several counties.

It was while in the discharge of the duties of this office that Mr. Cruger attained his highest professional reputation. At this period precedents and forms were hardly known; our system of criminal law was unsettled, and hence his duties were laborious and critical. It is related of him, that while district-attorney, a man was indicted for stealing a horse and saddle in the county of Steuben. The indictment was drawn by Cruger; but the cause was moved at a court

of Oyer and Terminer, held at Bath, while he was absent in Congress. The celebrated John W. Hurlbert, who was attending this court, was retained to defend the accused.

“Mr. Hurlbert,” said a lawyer who was to assist in the defense, “I think, at the proper time, we can quash the indictment in this case.”

“Upon what ground?” asked Hurlbert.

“Because it alleges that the man stole a horse and saddle, when in fact there was nothing but the horse taken; and then there is a mistake in the man’s name,” was the reply.

“Who drew the indictment?” asked Hurlbert.

“Cruger, the district-attorney, of course,” replied the lawyer.

“Well, sir, then it would be of no use to make an attempt to quash it; for, when Daniel Cruger drew it, he had his mind upon those very questions—and if there had been any error in them they would not be in the instrument; for he knew more about what there is connected with that paper than you and I, and, I think, I may as well say, the court and the bar generally. He looks to such things, sir, and the judges believe in him,—therefore it is of no use to make the attempt.” And no attempt was made.

This anecdote fully illustrates the capacity of Mr. Cruger as a special pleader and prosecuting officer.

In the year 1818, the jurisdiction of district-attorneys was confined to a single county. Cruger, however, was appointed the prosecuting officer for the county of Steuben, serving in that capacity one term, and was succeeded by the late Judge Wells.

In the year 1815, he formed a partnership with William B. Rochester, subsequently one of the circuit judges of the State, an eminent and distinguished politician, a lawyer of fine legal attainments, a judge of superior abilities, a gentleman by birth, intuition, association, and practice—a scholar ripe and thorough, and an ornament to the bench, the bar, and the polit-

ical field. It is needless, perhaps, to add, that the combination of such talents in a legal firm renders it extremely powerful.

Through a series of years, General Cruger wielded an influence in the counties of Steuben and Allegany, almost unbounded. If, as has been said, the courts believed in him, the people did so, most implicitly. He was a thorough and undeviating friend of De Witt Clinton. In his behalf, he carried war into Africa, or waged it at home, as the case demanded.

When Mr. Clinton was removed from the office of canal commissioner, meetings were held throughout the State, denouncing the act in the strongest and most emphatic manner. When the intelligence reached Steuben county, a large meeting convened at Bath. It was the largest gathering which, up to that time, had ever assembled in Steuben county. Mr. Cruger presided. His speech, on taking the chair, was one of great power and effect. He made no oratorical effort, no attempted fervency, no reaching after effect, no sensational display. His speech was the calm utterance—the dignified expression of one who deeply felt all that he uttered, and who imparted his feelings by a natural inspiration, into the hearts of his auditors, rendering his words penetrating and enduring.

“Private citizens,” said Mr. Cruger, “have rights as well as duties. The Legislature is but a co-ordinate branch of government, instituted for one and a single end—the duty of making laws. When it is perverted to other objects—to purposes of ambition, or party spirit, we are authorized—we are bound to make such opposition as shall call it back to a discharge of its proper duties, to endeavor to render it as pure as the imperfection of our nature will admit. Fellow citizens, that the Legislature, in the removal of Mr. Clinton, has perverted its power to party spirit—party rancor and hate, will be admitted by all reasonable and thinking men. No prophetic inspiration tells me that the people of this great State will surely vindicate



him. I assert that they will do so, because I claim to know something of the people of this State. Fellow citizens, the day will come when shame and confusion will fall upon the heads of the perpetrators of this outrage.”

During the year 1824-5, the question of State roads agitated the public mind in the counties of Tompkins, Steuben, and the adjoining counties. Commissioners had been appointed by the Legislature to locate such roads, who, at length reported in favor of two great routes, both to commence at Lake Erie, in the county of Chautauque, leading to Bath; but from Bath, the northern route was to lead to Ithaca, and from thence to Catskill; and the other, the southern route, from Bath to Painted Post, and thence to New Town and Binghamton, from there to Nyack on the Hudson River. A powerful attempt was made to divert both these routes from Bath, and in the fall of 1825, to check this movement, General Cruger, at the earnest solicitation of the citizens of that village, and of other parts of the county, consented to accept the nomination for Assembly. He was of course elected.

The Legislature of 1826 was organized by the election of Colonel Young, speaker of the Assembly, and immediately a fierce contest commenced over the question of the State roads proposed by the commissioners. They were strongly opposed by the speaker, Colonel Young, Francis Granger, Mr. Sill, from Oneida, and by the members from the counties bordering on the Erie and Champlain canals; combining against the measure, men of the highest influence in the State. On the other hand, the proposed roads were sustained by Generals Root and Cruger, Mr. Vanderpoel, from Columbia, and Woodcock, from Tompkins, with great power and address. These gentlemen were all lawyers of much distinction, standing at the head of the bar in their respective counties, and distinguished throughout the State for their legal, as well as political abilities. No party prejudice entered into this



contest; it was merely the jealousy and rivalry between what were then deemed great, extensive, proposed works of internal improvements.

And thus only forty-five years ago, the Legislature of the Empire State was engaged in a bitter and all-absorbing contest over the building of two common dirt or gravel roads, involving the expense of a few hundred thousand dollars, a much smaller sum than is at this day frequently disbursed by one great railroad company in procuring further immunities and privileges, or in its litigations with rival companies.

As the session of 1826 wore away, the contest deepened. The efforts of Mr. Cruger in its behalf were unceasing. His long experience as a legislator in Congress, and in the Legislature of the State, gave him that influence which, joined to a naturally strong and active intellect, rendered him a powerful supporter of the roads. Day and night saw him busy in the contest.

“Do you think Cruger ever sleeps?” said Mr. Sill, one day to Mr. Granger.

“Yes; with one eye open,” was the reply.

“Say with both eyes open,” said Mr. Sill, “and then you will have it right.”

Towards the close of the session, the contest came to a decisive issue on a motion to indefinitely postpone the construction of the roads, which was carried by a vote of fifty to forty-eight, and thus the great measure of the southern tier counties was defeated. But the indignation which followed its defeat resulted in another project, more stupendous when it was proposed, than was that for the construction of the Erie canal. It was a proposal to build a railroad by which the city of New York would be united with the shores of Lake Erie. This project seemed at first too chimerical to be seriously entertained; it seemed to belong to what Colonel Young styled “a profligate career of internal improvement.”

With the adjournment of the Legislature of 1826,

the legislative career of General Cruger closed forever. The influence which he exerted in the Assembly and in Congress, has already been alluded to. Much of this was due to the natural suavity of his manners and his popular talents, but more to the consummate skill and ability with which he planned his measures, and the indomitable energy with which he carried those measures into execution.

A measure which became necessary for him personally to carry into execution, was never delayed on account of darkness or the elements. In such cases, sunshine and tempest, day and night, were all the same to him.

The following incident illustrates this characteristic, and evinces a greatness of action which, had he been a military commander, would in times of war have rendered him formidable and victorious in the field.

While in the discharge of his duties as district-attorney under the large district system, he left Bath to attend a term of the Allegany Oyer and Terminer, at Angelica. At that day, lawyers, as well as judges, traveled from circuit to circuit on horseback. In those days Cruger was the owner of a valuable horse, which he called Jingle Foot. He was a large bay animal, with a white star in his forehead, finely proportioned, and, like his master, with whom he was a great favorite, capable of great endurance; he was as fleet as a deer, and as docile as he was fleet.

Jingle Foot had for two or three years, carried his master to all the courts in western New York, and he was therefore almost as famous as the steed of Alexander the Great. On this visit to Angelica, Mr. Cruger, as usual, rode his favorite horse. He reached that village some time in the afternoon on the first day of the circuit.

On his arrival, he found his Democratic friends in a state of great vexation, excitement and chagrin,

owing to an advantage which the Federals had apparently gained over them.

About this time the term of the clerk of the county of Allegany, who was a Republican, was drawing to a close. That officer was then appointed by the council of appointment at Albany, which at that time was composed of Democrats, and of course would appoint any person upon whom the leaders of that party in Allegany county could unite. This council was to meet on Thursday of that week, but as there had been some secret misunderstanding among the Democrats as to the proper person to recommend, no name had been sent to Albany.

In the mean time, the Federal leaders, who had been on the alert, learned of the troubles in the ranks of their opponents, and that there was likely to be such a disagreement that no person would be recommended to the council by them for clerk, secretly sent forward the name of one of the most bitter, rank, and objectionable Federalists in the county as a candidate for that office; and of course, if there was no opposition, he would be appointed, otherwise the old clerk would hold over. The fact that a Federal name had been sent to the council of appointment had just come to the knowledge of the Democrats when Cruger arrived. The partizan contests of those days were bitter in the extreme. The appointment of clerk was a matter of considerable advantage; and of course this was a serious affair — especially as it was now apparently too late to remedy the evil.

Nothing could exceed the chagrin and mortification of Cruger on learning this state of things. In a few moments his room was filled with the leading Republicans of the county. A Federal clerk in the county of Allegany! Good heavens! Why, the matter was not to be thought of. But as the appointment was so soon to be made, no mail could reach Albany in time to prevent it, and the matter seemed already

decided. For a time Mr. Cruger walked the room in a state of intense excitement. At length he sent for the landlord; that person soon made his appearance.

"Bullock," said Cruger, "have Jingle Foot well rubbed, fed, saddled and bridled within an hour and a half."

He then sent for General Haight, who was attending court at Angelica at that time. When that gentleman appeared, he said:

"General, I want you to take charge of my business during this term; put over what causes you can, and try the rest, for I am going to Albany."

"Going to Albany!" exclaimed several gentlemen at the same moment.

"Going to Albany, Cruger? What can you be going to Albany for?" asked General Haight.

"To prevent this county being disgraced by a Federal clerk," was the reply.

"Why, good heavens, Cruger!" said a gentleman present, "you can't reach Albany in time to prevent that appointment now."

"Yes I can. Jingle Foot will land me safely in Albany between this and Thursday noon, or I am mistaken in him; at any rate, he and I will make a trial to overturn the nice plans of these infernal Federalists," said Cruger.

He then gave the general some further instruction concerning his business, and in due time word came that Jingle Foot was ready at the door.

This was in the month of June. The sun was just going down as Mr. Cruger mounted his horse and rode out of the village. Night and day, over hill and dale, he pressed forward, stopping just long enough for refreshments and a little rest. Jingle Foot seemed imbued with the same determined energy as his master—seemed to gather fresh strength as he sped on his course. Such was his progress, that, just as the old Albany town clock tolled the hour of noon, Cruger drew him up in front of the City Hotel.

“Take such care of that horse as you never did of any other,” said he to the ostler, who came forward as he rode up; and the noble animal was soon safe in the comfortable stables of the hotel.

At the appointed time the council of appointment assembled. As Allegany county was the first on the list, that body was in the act of naming the person recommended by the Federalists for clerk of that county, when Daniel Cruger, to their great astonishment, stood before it. He was not long in relating the true situation of affairs in that remote region, and matters were soon arranged to his satisfaction.

After resting a day or two at Albany, he again mounted Jingle Foot, returned to Angelica, and the Democrats of Allegany county rejoiced in the appointment of a clerk belonging to their own party, having learned a lesson that healed all dissensions among them. This is but one of the many circumstances which, during Mr. Cruger’s political career, attest his almost superhuman energy.

In person Mr. Cruger was below the common hight; thick set, though not corpulent; well formed, having one of those figures which bespeak the true gentleman. He was graceful and easy in his manners. His conversation was refined and cultivated. Both Mr. and Mrs. Cruger possessed that hospitality which always filled their house with intelligent and pleasing guests.

During the session of the courts at Bath, their home was always the headquarters of the judges who presided. There Ambrose Spencer, Yates and Van Ness, rested from their labors in the court room; there, too, John C. Spencer, Elisha Williams, Samuel A. Talcott, John A. Collier, David Woodcock, and other eminent lawyers of the day, forgetting the collisions of the bar, were entertained by Mr. Cruger and his accomplished lady, while many an agreeable hour passed by enlivened by pleasing and refined conversation.



It was the custom in those days, when the presiding judge arrived at a county seat for the purpose of holding court, to receive him with public honors; and when the hour for the session to open arrived, the sheriff, in full uniform, attended by his assistants, carrying their badges of office, waited upon him at his lodgings, and escorted him to the court house; and in the court room every thing was conducted in the same formal manner. The dignity of the bench was sustained by the dignity of the bar, and the people were thus led to believe that justice, though incumbered with many formalities, was sacred and awful. Though those customs would not answer for Young America—much older now than at that time—yet a recurrence to them is not without profit and interest.

In the year 1828, Mr. Cruger sustained an irreparable misfortune in the death of his wife. She died at Syracuse, while her husband was a temporary resident of that place. Soon after this event, he returned to Bath, dividing his time between his profession and various other business matters in which he was engaged.

In the year 1833 he was married to Mrs. Shepard, a highly respectable widow lady residing at Wheeling, Virginia. Soon after this, he invested his property at Wheeling, and became a resident of that town. Here he lived in great respectability, occupying a prominent and honorable position in society, regarded as an intelligent and honorable gentleman. Early in June, 1843, while attending a meeting of the directory of the Wheeling Bank, he was stricken down with apoplexy, dying within a few moments after the attack.

## SAMUEL H. FITZHUGH.

**His Peculiar Characteristics.**—Contradictory Traits of his Character.—His Independence.—His Firmness.—Born at the Hive, in Maryland.—Enters Jefferson College.—His Popularity with the Faculty.—An Interesting Incident.—Troubles with Ridgeway, the Kentuckian.—Call me Ridgeway, Sir, not Ridge.—Fitzhugh insists upon "Ridge."—Incurs the Hatred of Ridgeway.—Scene in the Ball Room.—The Insult.—The Manner in which Fitzhugh Resented it.—Pulls Ridgeway's Nose.—The Result.—Fitzhugh Graduates and Commences the Study of the Law with Judge Howell, at Canandaigua.—Is admitted to the Bar.—Removes to Wheeling, Virginia, and Commences Practice.—His Marriage.—Early Death of his Wife.—Removes to Mount Morris, New York.—Enters the Practice.—Is appointed a Judge of Livingston County.—Character of the Bench and Bar of Livingston County.—Judge Fitzhugh on the Bench.—The Perjured Witness.—The Arrest.—The Scene in the Court Room between two eminent Lawyers.—Fitzhugh enters into a Partnership.—Fitzhugh's Learning.—His Literary Taste.—His Favorite Authors.—Did Shakespeare understand the Art of Budding Flowers?—Proof that he did.—The Quotation.—Judge Fitzhugh's Love of Fishing.—Singular Fishing Excursion.—Meets a Strange Fisherman.—Fitzhugh's Disgust at his Manner of Fishing.—The Reconciliation.—Amusing Incident at Geneseo.—A Cup of hot Coffee out of Place.—The Garrulous Lawyer.—Fitzhugh's Witty Reply to him.—The Wood Thief.—Amusing Anecdote.

WITH the life of Judge Fitzhugh there are connected many pleasant recollections. He was a scholar of fine attainments—a lawyer deeply and thoroughly read in all the learning of his profession. He possessed a strong native intellect—clear and forcible reasoning powers; his education was enlivened and vitalized by association with men of varied acquirements. Thus, he was a man of no ordinary mind; while his manly nature, his generous and high-toned impulses, his sincere and chivalrous sense of honor, his blunt but disinterested honesty, constituted him a gentleman by intuition.

It is true, that there were dissimilar features in his character, an abruptness in his manner—certain ex-

tremes in his disposition, which on a slight acquaintance were difficult to reconcile; but when those traits were thoroughly understood, they rendered him attractive and pleasing. Singularly independent in his nature and judgment, he was not easily influenced by authority, numbers, or popularity. If a man, an idea, or sentiment pleased him, he did not stop to consider the popularity or unpopularity connected with the man, the idea, or sentiment; he adopted the one as a friend, the other as a pleasure. There was not force enough in the universe to coerce him into a measure; but a friend could lead him by a hair. If there were in his character many blemishes, they were counteracted by many excellent qualities. With him, hypocrisy, smooth-lipped deception, honeyed treachery, soft and fawning deceit, were loathsome and hateful. Finally, he was one of those men who, like Mark Antony, spoke "right on."

Samuel H. Fitzhugh was born at the Hive, Washington county, Maryland, February 22, 1796. After a thorough preparation, he was admitted into Jefferson College, Pennsylvania. This institution was then very popular with the southern people, and many sons of the rich planters were the fellow students of young Fitzhugh. His frank and sunny nature rendered him a favorite with all the students, while his studious habits commended him to the faculty.

During his first year in college, an incident occurred which exhibited his character when smarting under an insult. There was in the college at that time, a student by the name of Ridgeway, from Kentucky. Large and powerful in person, haughty and overbearing in his manner, he was frequently engaged in collisions and broils with the students. This person had conceived a dislike to Fitzhugh for his straight out and independent nature; and because he insisted upon calling him Ridge, instead of Mr. Ridgeway.

"Fitzhugh," said he, one day, "my name is not

Ridge ; it is Ridgeway, sir ; call me by my name after this, sir."

"My name is Fitzhugh, sir ; a good name it is too, sir ; but the boys call me Fitz, and I've no objections ; they insist upon calling you Ridge, because it is short and business like, and so Ridge, here goes for the future ; Ridge it is, and Ridge it must be ; good night, sir."

From that time, Ridgeway became dark and sullen in his manner towards Fitzhugh, and gave out word that he would punish him when an opportunity occurred. Once he offered a slight insult to him, but Fitzhugh took no notice of it. This the bully attributed to cowardice, and was even more insolent to him.

One evening while Fitzhugh and Ridgeway, in company with several other students, were attending a ball at Gettysburg, it happened that they both sought to engage an accomplished young lady at the same time, for a set ; the lady declined to dance with the latter, but accepted the invitation of the former. A malignant scowl exhibited the irritation of Ridgeway, and as the successful suitor was leading his partner to the dance, the Kentuckian rudely jostled against him, almost throwing him upon the floor. Fitzhugh instantly regained his position, and without regarding his assailant, joined in the dance. But all who were present saw by the bright glow on his cheek that a storm was raging in his bosom. Nothing, however, occurred to mar the pleasure of the evening. The young men joined in the dance, without adverting to the matter ; but Ridgeway assumed a more important air, which seemed to say, "he fears me." The next morning, Fitzhugh met him in company with several students. "Stop, sir," said he, as the latter was passing him. "Why did you jostle me last night at the dance?"

"Because it suited my pleasure to do so, and

what is more, because you dare not resent it," said Ridgeway."

"I dare wring your nose, sir," and suiting the action to the words, he seized the nasal organ of the bully, and gave it a twist, which caused it to look like a purple excrescence, upon which a surgical operation had just been performed. "Resent that if you dare. I'll teach you manners, sir, before I get though with you," said Fitzhugh. Contrary to the expectation of the students, Ridgeway turned and left his assailant without uttering a word. For some days after this event, there were rumors of a challenge and various retributive movements on his part, but he was very careful to avoid Fitzhugh, and no further acts of hostility occurred between the young men. The Kentuckian lost his presumption and impudence. At length he sought an interview with Fitzhugh, and acknowledged that he was in the wrong, and that it had been properly resented. This ended all coldness between them, and they remained friends during their term in college.

In June, 1816, Mr. Fitzhugh graduated. After leaving college, he became a resident of Canandaigua. While there, he was invited by the late Judge Howell to enter his office as a student at law. The invitation was accepted, and Mr. Fitzhugh commenced his legal studies. Some time after this, Judge Howell formed a copartnership with the late John Gregg. Mr. Fitzhugh continued with these gentlemen until October, 1819, when he was called to the bar. Immediately after receiving his license to practice, he removed to Wheeling, Virginia, where he opened an office, and entered on the duties of his profession. His success as a lawyer was flattering, and he soon gained a very respectable position at the Pennsylvania bar. He was married to Miss Mary Addison, a daughter of Judge Addison, of Wheeling, in October, 1820. Mrs. Fitzhugh was an accomplished and lovely woman. To the attributes of a gentle and loving wife, she added



those of an attractive and agreeable leader in the society at Wheeling. Mr. Fitzhugh's union with her was fortunate. But in the midst of his domestic happiness, death removed her who was its center and its life. Mrs. Fitzhugh died in December, 1821, leaving one son, William A. Fitzhugh, Esq.

Judge Fitzhugh continued at Wheeling until the year 1831, when he removed to Mt. Morris, Livingston county, N. Y. Having interests to a considerable extent in lands at that place, he engaged, for a time, in agricultural pursuits. But his love for the legal profession caused him to relinquish the life of a farmer, and he returned to the practice of law.

In the year 1840 Colonel Reuben P. Wisner, of Mt. Morris, was appointed one of the judges of the Livingston Common Pleas. After holding the office a few days, he resigned, and Mr. Fitzhugh was appointed to fill the vacancy. At this time, Willard H. Smith, of Caledonia, was first judge of Livingston County, and James Faulkner, of Dansville, and David H. Bissell, of Geneseo, were associate judges. Judge Smith was a lawyer of fine attainments, and a judge who presided with marked ability, dignity and impartiality, while his associates were men of much more than ordinary ability. The appointment of Mr. Fitzhugh was a valuable acquisition to the bench of Livingston county. His learning and experience as a lawyer were not the only qualifications which gave him character as a judge. His keen love of justice and right—his hatred of all fraud—his promptitude, and sterling honesty were still more valuable traits in his character. Under the supervision of such able judges, the Livingston Common Pleas attained a high rank as a tribunal, and at its bar the leading lawyers of western New York constantly appeared.

At a term of this court held in May, 1842, a circumstance occurred which exhibited the stern love of justice which animated Judge Fitzhugh. During the progress of a trial, in which the late John Young and

Hon. J. B. Skinner, now of Buffalo, were opposing counsel, Judge Fitzhugh presided. In the course of the trial, a witness was introduced by one of the parties, whose testimony was so strongly contradicted by various circumstances, that it was apparent he had committed perjury.

“Sheriff!” thundered Judge Fitzhugh from the bench, “arrest that man, and commit him to jail for perjury; and if no one else appears against him before the grand jury, I will; for he has desecrated the precincts of justice with falsehoods.”

The order was obeyed, and the judge himself appeared before the grand jury, which was then in session, and preferred the complaint. The man was indicted for perjury, and convicted.

During this trial the contest between the counsel descended to some severe personalities. Mr. Young, contrary to his usual dignified and courteous manner at the bar, indulged in some sharp sarcasms upon Mr. Skinner. At length the better nature of the former prevailed, and he remarked that during the remainder of the trial he should endeavor to try the cause in a manner that would be more comfortable to the opposing counsel, as well as to himself.

“Never mind me, Mr. Young,” said Skinner. “Suit yourself; I have endured your attacks until I am like the man who laid so long on a bed of spikes that he preferred it to any other.”

“Gentlemen,” said Judge Fitzhugh, “unless you end this, the court will make you both acquainted with the terrors of the law.”

Though the trial continued some days after this, those distinguished lawyers treated each other with all the urbanity of their nature.

Judge Fitzhugh was for several years a partner of Colonel R. P. Wisner, and they controlled a large and extensive business. Colonel Wisner is still a resident of Mt. Morris, and a prominent member of

the Livingston bar. In the year 1840 he represented Livingston county in the Legislature of the State.

Judge Fitzhugh was deeply and thoroughly read in the common law. Like Lord Coke, he delighted to trace it from its dawn to that period, when, under the illustrious judges and jurists of England, it became, in the lively language of Burke, "the pride of the human intellect, the collected wisdom of ages, combining the principles of original justice with the variety of human concerns."

The judge once remarked to one of his students, now an eminent lawyer, that to the mind fond of exercising its reasoning powers, and of investigating the philosophy of the law, the earlier reports of the New York State courts afford the most valuable and interesting course of legal reading that can be marked out. He often alluded to the celebrated game case of *Pierson v. Post*, reported in 3 *Caines*, as containing the most genuine legal witticism in our language.

The strength of Judge Fitzhugh, as a lawyer, did not consist so much in his skill at the bar, as in the counselor, the legal adviser, and the judge. In all these positions he arose far above mediocrity. His knowledge of the classics, both ancient and modern, was surpassed by few. This knowledge was enlivened by a keen and brilliant wit. Such were the singular associations of his mind, such his "most excellent differences," that his wit was always at his command; and, though Lord Chesterfield has said that genuine wit never made any man laugh, yet it was impossible to be in Fitzhugh's society without giving way to immoderate laughter. He could make an aphorism or a reflection and it came home as true. His unpretending flow of conversation rendered him interesting whenever topics of intellectual interest were discussed,—the plain and solid sense which he threw into his remarks, rendered him a pleasing and attractive companion.

Among the modern authors whom he particularly

admired was Rousseau, whose wonderful conceptions, whose impassioned and meditative mind, whose thoughts of tenderness, truth and profundity were peculiarly pleasing to him.

His favorite table books were Middleton's *Life of Cicero* and Hume's *History of England*—the former the most perfect biographical work, the latter the ablest history of England that can be placed in the hands of the reader. Often while on a fishing excursion he would drop his rod, throw himself on the grass, and repeat the harmonious and elegant language of Cicero, Virgil, Horace and Livy, in their native tongue, with all their grammatical perfection and inflections. Then he would contrast the satires of Juvenal with those of Pope, Butler and Byron; always insisting that the latter, in writing his *Scotch Reviewers*, took his cue from the *Satires of Juvenal*.

These were no pedantic displays; they were the actions of a mind replete with the love of those great writers, glowing and kindling with their themes. Leaving these subjects, he would turn the conversation to agriculture, the improvement of stock, of fruit, and even flowers—exhibiting the most perfect and practical knowledge of all these subjects. One day while fishing with a friend, they came across some beautiful wild flowers. Stopping to admire them, Fitzhugh said:

“Is it not strange that old Will Shakspeare, who wrote so graphically concerning wars, sieges, battles and the human passions, was also a botanist, and understood the art of budding flowers?”

“This had not occurred to me,” said the friend.

“The following sentence from *Winter's Tale* proves it: ‘The fairest flowers of the season are our carnations, and the streaked gillyflowers, but I care not to get slips of them.’ Then as to the art of budding, he says:

“ ‘We marry a gentle scion to the wildest stock,  
And make conceive a bark of baser kind

By bud of nobler race. This is an  
Art which does mend nature.'

There," said the judge, "does not that prove old Shake a better florist than many of our modern ones?"

He regarded the horse as the noblest, and at the same time the most abused animal that Deity ever gave to man.

"My God, sir," said he one day, "it provokes me beyond endurance, when I see how many fools there are who attempt to manage those splendid and intelligent creatures, who really know more than half of their owners."

The favorite amusement of Judge Fitzhugh was trout fishing. His nice appreciation of the piscatorial art gave him the name of "the Walton of western New York." He would often leave his professional labors—with basket and fishing rod, seek some stream that shimmered and flashed along the base of distant hills, or flowed in peaceful murmurs through the grand old forests of Pennsylvania, and there perhaps,

"Under an oak whose antique root peeps out  
Upon the brook, that brawls along the woods."

pursue his favorite pastime. His was emphatically a mind that could

"Find tongues in trees, books in the running brook."

While fishing he always used the fly, entertaining the most sovereign contempt for any other mode of capturing trout, or, as he often termed them, "the aristocrats of the streams." It is related of him that once, while on a fishing excursion, he met a fisherman, whose well filled basket proved the success with which he had met.

"You have some fine trout there," said the judge.



“Yes, sir, but I should have caught more only my bait gave out,” said the man.

“Bait! bait! What, are you one of those fellows that kill a quart of angle-worms to catch one fish; one of those bunglers that can’t appreciate a trout any more than an ape can literature?” said the judge.

“I mean to say that I caught these fish with angle-worms for my bait,” said the man.

“You do? Well, sir, don’t you know that it is unmanly and vulgar to do so? I would as soon eat carrion as a trout caught with a hook baited with an angle-worm,” said Fitzhugh.

“Who the devil are you, that goes about telling folks what they should fish with? May be you hav’n’t read the Declaration of Independence,” said the fisherman.

“I am a gentleman, sir, and you are not. A man can’t be a gentleman that fishes for trout with angle-worms,” was the reply.

“Damn it, sir, is it any of your business what a man fishes with? I’ve a great notion to pitch you into the creek, only that you are such an ugly looking cuss that you’d scare all the fish out of it forever,” said the man, in a towering passion.

“Attempt that and I’ll make live bait of you in a minute. I tell you it is my business what a man fishes with. You degenerate trout and baffle science when you fish with angle-worms. You teach that fish the habits of a common bull-head. With a fly it is a fair game between the man and the trout, and you cultivate those instincts which make him the pride of the water,” said Fitzhugh.

“See here, what is your name?” said the fellow.

“My name is Fitzhugh—a name I have never dishonored yet, and I never shall, until I am caught fishing for trout with angle-worms,” was the reply.

“Are you Judge Fitzhugh, the man that can catch trout with a buncomb insect on his hook just as

well where there ain't any, as where there is plenty of them?"

"They call me Judge Fitzhugh."

"Well, I'd half a mind to thrash you just now, but that's past. Do you think I can learn to catch trout with one of those things you call a fly?"

"Yes," said the judge, "go with me awhile and I'll give you a lesson."

Accordingly the man accompanied the judge for some time, watching the skillfully thrown line with its darting fly, now alighting on the edge of a swift whirling eddy, now skipping over the bright, swift ripples, now floating on the smooth current or gyrating "like a strong swimmer in his agony," tempting the shy tenants of the brook to spring at the glittering insect above them, only to find themselves caught full surely by the fatal snare.

The man lingered until the judge's basket was nearly filled, then, with admiration glowing on his features, he exclaimed, "Judge, that's a big game between you and those trout, and a pretty one, too; damn me if you don't get the best of it, though. I'm done with angle-worms after this. Good-bye;" and the fisherman's form was soon lost in the forest.

Some time during the ensuing winter, Fitzhugh received a splendid saddle of venison from some unknown person. It was neatly packed in a basket. On removing the cover, a paper was discovered, on which was written the following:

"From the fellow that don't fish for trout with angle-worms any more, but goes it strong on the fly."

Love of raillery was a strong feature in the character of Judge Fitzhugh, and he was remarkable for his quick and happy repartees. One morning during the sittings of the Common Pleas, he was at breakfast at one of the hotels in Geneseo. Among those at the table was a lawyer, noted for his very large mouth and his unceasing garrulity. During a pompous display of words, one of the waiters, while passing his chair,

unfortunately stumbled, and a large cup filled with coffee was lodged on the lawyer's head, deluging it with the hot fluid. Frightened and blinded he sprang to his feet, nearly overturning the table.

"La—land—landlord! for God's sake, come here! Where in h—ll did this kettle of hot water come from? Get it off! get it off!" he roared, whirling about the room like Polypheme deprived of his single eye.

The landlord and several waiters rushed to his assistance, with towels and dry cloths. After considerable wiping and rubbing, it was ascertained that he had sustained but little injury, being much more frightened than hurt, and he was soon seated at the table again.

"What a miserable piece of carelessness that was," said he.

"You might have avoided that accident yourself," said Fitzhugh.

"I should like to know how?" asked the lawyer.

"By opening your mouth when the cup fell. Neither coffee nor cup would have been heard of again, if you had," was the answer.

This reply "set the table in a roar." The lawyer joined in the merriment, his big mouth enabling him to be heard over all the rest present.

The liberality of Judge Fitzhugh was proverbial. His generosity was unstudied and disinterested. He bestowed his charities in such a manner that his right hand did not know of the doings of his left; and his humane nature often exhibited itself in the most ludicrous manner. He once owned a valuable timber lot, adjoining which was another, owned by the late Judge Carrol. One day Fitzhugh received notice that a man had been cutting timber on his lot. Now, stealing timber from Judge Carrol was almost a matter of course. The former, however, was highly indignant at the larceny committed on his timber, and he immediately caused a warrant to be issued for the arrest of

the timber thief. In due time the constable, with the culprit, appeared at Fitzhugh's office.

"You scoundrel," said the judge, stroking back his long black hair, and fixing his piercing eyes upon the man. "how dare you steal my timber? I'll send you where you won't see a tree again for a year! What have you got to say for yourself?"

"I—I—did—didn't mean to cut your timber, Judge."

"Didn't mean to cut my timber!" roared the judge. "What the devil did you mean to do?"

"I—I—thought—I thought—"

"Well, sir, what did you think, you rascal?" said Fitzhugh, growing wrathful every moment.

"I thought it was Judge Carrol's timber that I was cutting," said the man, bursting into tears, and trembling with terror.

Fitzhugh walked the office floor a moment without uttering a word. Finally he halted in front of the prisoner, and taking a five-dollar bill from his pocket, handed it to the fellow, saying:

"Here, take that, damn you, and the next time see that you get on to the right lot."

He then ordered the man to be discharged from arrest, and paid the cost of the proceedings himself.

## JOSEPH L. RICHARDSON.

His Memory intimately connected with the History of Cayuga County.—His Associates at the Bar.—Characteristics as a Lawyer.—The Effect of an Increase of Precedents upon the Profession.—The Training and Culture of Lawyers.—The Old Court of Chancery.—Lawyers who Reason and Study.—Those who Never Reason and Never Study.—All Professions Have Superficial Members who would regard Archimedes as Weak, and Newton Foolish.—Richardson as a Private Citizen.—Anecdote.—Richardson and the Church Meeting.—His Manner of Construing the Call Turns the Tables.—Daniel Kellogg.—Richardson is Appointed District-Attorney for Several Counties.—Manner of Discharging the Duties of his Office.—The Singular and Interesting Case of the People *v.* Bishop.—Richard Jameson.—The Journey by Moonlight through the Forest.—The Attack of the Robber.—Your Money, and be Quick about it.—The Conflict.—The Robbery.—Escape of the Robber.—The Pursuit.—The Arrest.—The Trial.—Elisha Williams.—Singular Discovery of the Robber's Shoe.—The Conviction of the Robber.—Richardson Retires from the Office of District-Attorney.—The Survivors of the Old Auburn Bar.—Richardson Appointed First Judge of Cayuga County.—Character as a Judge.—Negro Bill.—The Sentence.—Personal Appearance of Judge Richardson.—His Religious Character.—His Death.

THE name of Joseph L. Richardson is intimately connected with the history of Cayuga county. He was one of the earliest and most eminent members of its bar—one of its most incorruptible, impartial, and efficient judges. At the bar, or on the bench, he was most conscientious—a man of strict integrity—of a profound and comprehensive mind—a lawyer of the old school—the compeer of Platt, Marcy, Tompkins, Root, Van Ness, Williams, Noxon and Jewett. As the lawyer or the judge, he cast a quick penetrating glance over the facts and law in the case, then drew his conclusions with a logical precision for which he was distinguished.

Slenderly furnished with fancy or imagination, and wanting in originality, he was more capable of following a train of reasoning, of expounding the theo-



ries of others, and pursuing them to their legitimate consequences, than of striking out new theories for himself. Hence, he was able to perform much mental labor, though while he was at the bar, that multitude of legal reports which abound at the present day did not exist,—intolerably augmenting the labors of the student—tormenting the practitioner—substituting for the study of legal principle the empirical recollection of facts, and discouraging the acquirement of a scientific and philosophic knowledge of the law.

It cannot be pretended that he was a great lawyer, but he was learned and successful, and as has been already said, eminent in his profession. If he did not dazzle with sudden, bold, and exaggerated conceptions—if he did not startle and thrill with eloquence, the balance of his mind, his unwearied research in the tomes of old judges and reporters, his easy logic, his sound and practical good sense, his ready flow of language, rendered him a strong contestant in the forum, a versatile, safe, and ready counselor. Trained in the contests of stirring life, strengthened by enlarged experience, he was as successful as he was strong.

Judge Richardson was born at Tawneytown, Maryland, June 5th, 1777. At a very early age he emigrated to Cayuga county, and settled at Aurora. He read law with the late Walter Wood, a lawyer of considerable eminence, who in the year 1810 was appointed first judge of Cayuga county. Richardson prepared for the bar with Judge Wood, and in October, 1802, he was admitted to practice.

At the period when he was called to the bar, with all due respect to the profession at the present time be it said, the education and training of lawyers were severe and thorough. The principles of law adapted to the court of chancery alone, when well understood, rendered a lawyer accomplished and learned. It is too frequently the case at the present age, that while a profound and reasoning lawyer is carefully picking

his way through the tangles of a difficult case, carefully removing all obstacles in his way, like Application ascending the hill of science, those who never think, never study, jump as by intuition at the argument, often landing beyond it, and if they find themselves in an untenable position, and learning is not at hand, they ride home on an amendment, or recuscitate themselves by a special motion. Perhaps these men are as successful, and acquire as much money as their more learned and painstaking brethren.

In all professions there are those who would set down Archimedes for a fool, when after days of diligent, painful study, he danced for joy at the solution of a proposition, and who would mistake Newton for a mad man, when in his surplice, put on for chapel exercise in the evening, he was found in the morning, in the same place, in profound meditation on the theory of prismatic colors.

It is true that science alone is hard and mechanical, that it exercises the understanding upon things out of ourselves, while it leaves the affections unemployed; and thus all professions, followed with intense application, tend to narrow the intellect. But no professional student or practitioner, no statesman or legislator, can long remain the mere man of books, of classical erudition, for he is called upon to make acquaintance with so many practical matters, that something must be lost to particular skill and acquisition.

Judge Richardson was gifted with extraordinary powers of application, and he very early furnished his mind with a thorough knowledge of the common law. He was called to the bar when the principles of our jurisprudence were being formed by those master hands which have adorned it with more than trans-Atlantic learning and purity. This vigorous mind, unaided by the digests and abridgments of the present age, enabled him to aid in the great work of founding our legal system.

Fortunate in his pecuniary matters, he accumulated a large property. Indeed, he was charged with avarice and parsimony. That his love of money was very great, there is no doubt, and that he ardently sought to obtain it, is true; but in this he only anticipated, in a small degree, the wild and almost passionate clamor for money, which characterizes our own times. But really, that which in him was termed penuriousness, was only apparently so—it was the result of his fine sense of punctuality, exact dealing, and direct honesty. Prompt and accurate himself, he expected to find the same quality in others. It is related of him, that once a man called and paid him some money. In making change, he became the man's debtor to the amount of six cents.

“Never mind,” said the man, “this is near enough.”

“Oh no,” said the judge, “you shall have your pay when I see you again.”

It happened that they did not meet again until after the lapse of a year; but one day, the judge saw his creditor in the street,—walking up to him, he said :

“Now, Mr. Somers, I will pay you what I am owing you.”

“Pay me what you are owing me? Why, Judge, you don't owe me anything but good will,” said Somers.

“Oh yes I do. I owe you six cents, and here it is,” said Richardson, handing him the money.

“Never mind it, Judge, it is such a small amount, that it is of no consequence.”

“My dear sir, no sum is so small that it ought not to be paid. Small sums are like small stones in a great wall: as necessary to be kept in their place as the large ones. When the small stones become loose and detached, the whole wall soon falls down.”

This circumstance is a true interpretation of Richardson's character with regard to money matters.

Judge Richardson was for many years a member

of the Episcopal Church at Auburn. Some time about the year 1830, the church edifice was destroyed by fire. The congregation at this time was not large, or wealthy. In a short time after the disaster, a meeting of the parishioners was called, for the purpose of adopting measures to rebuild the church, at which Judge Richardson presided. After the meeting was called to order, one after another arose and stated that the parish was too poor to think of rebuilding; and one of the gentlemen present proposed a resolution to that effect. Before submitting the question, Judge Richardson said :

“Gentlemen, I think you have entirely misunderstood the object of this meeting; it was not called for passing the resolution just offered; on the contrary, it was called for the purpose of adopting measures to rebuild our church; that is the exact wording of the call; now, I propose that we proceed to carry out the object of the meeting, and as action is the best way to proceed, the first thing to be done is to ascertain what each person here present is willing to give; and as you have honored me by making me chairman, I will commence by stating what I will do—I will give one thousand dollars towards the object.”

This speech took the meeting entirely by surprise. It gave an entirely different turn to affairs, and before they adjourned, sufficient means were raised to rebuild the church in a very handsome, and for those times, elegant manner.

In the year 1801, the Legislature created the office of district-attorney, and divided the State into seven districts; soon after, five more districts were added, and one district-attorney was appointed by the governor and council for each district. The positions of these officers were nearly as responsible and important as that of the attorney-general. The counties of Cayuga, Cortland, Chenango, Madison, and Onondaga, constituted the ninth attorney district.

In April, 1815, Joseph L. Richardson was ap-



pointed by Governor Tompkins as district-attorney for these counties, in place of the late Daniel Kellogg, whose term of office had expired. Mr. Kellogg was an able lawyer, a distinguished, high-minded citizen, and for many years a man of much influence in the counties of Onondaga and Cayuga. During Mr. Richardson's official term, he was called upon to conduct many important and difficult prosecutions for the people. His speeches and arguments delivered on these occasions, were marked for their ability, their close texture, and their skillful adaptation of the law to his purpose.

One of the most singular and interesting cases which it was his fortune to conduct, was that of the *People v. Bishop*, a man charged with highway robbery. It was tried very soon after he was appointed a prosecuting officer.

In the month of June, 1815, one Richard Jameson visited a small settlement situated near the boundary line between the counties of Chenango and Otsego, for the purpose of receiving a considerable sum of money due by a man who then resided there. The money was paid; and after transacting some other business, he started for home, eight miles distant. It was nearly night when he commenced his journey, and his route lay through an almost unbroken forest, marked by a single path. But as he was familiar with the way, and there was a full moon, he was not the least disquieted with the thought that night would overtake him before reaching home; and he walked rapidly and cheerfully onward, happy in the thought that there were "eyes which would look the brighter for his coming."

At length he reached a wet and marshy turn in the path, where stood a blasted hemlock, upon whose few scathed and withered limbs the moonbeams fell like the weird drapery of Niobe, when a man of gigantic stature, disguised with a mask, suddenly sprang from a thicket, and, presenting a pistol at the breast of the



traveler, demanded his money. Jameson possessed a strongly knit and powerful frame; he was cool, courageous, and determined, and therefore not the man to yield to this demand without a struggle.

“Do you really mean what you say?” he coolly asked the robber.

“Yes! Give me your money, and be quick about it, or I'll blow your brains out, and take it from your dead carcass,” was the savage reply.

With the spring of a tiger, Jameson grappled the ruffian before he could discharge the pistol, and a desperate contest ensued. Alone, in the depths of the forest, beneath the shades of night, and the uncertain glimmer of the moon, those strong and desperate men closed in mortal strife. There was something terribly appalling in this struggle. There was the tug, the grip, the blow. There was the quick, heavy, heaving breath, the low and deep-muttered curse. The gigantic ruffian writhed in the grasp of Jameson, like the Laocoon in the folds of the monster serpents—now springing forward with the hope of crushing his intended victim with his weight, and now attempting to clutch his throat with his huge hands, and now struggling to bring the muzzle of his pistol to bear upon the person of Jameson, who, “invulnerable still,” held his desperate enemy at bay. At length the ruffian, by a sudden effort, succeeded in bringing the pistol to a level with the head of his victim, but as his finger was pressing the trigger, Jameson suddenly dodged, and the bullet grazed his cheek. Stunned by the report of the pistol, he fell senseless to the ground; when he came to his senses the robber was gone, and his money taken. After a short time, he recovered sufficiently to make his way homeward. He aroused his neighbors, and at early dawn they started in pursuit of the wretch. They first visited the scene of the robbery. There the ground exhibited the severity of the contest; but it was so soft and marshy, that most of the footprints of the parties engaged, were nearly closed by

the yielding earth. As no signs of the villain remained, they left the place and prepared to scour the country in pursuit of him. Several circumstances led Jameson to believe that the robber was a man by the name of Bishop, who had recently come into the country. Prominent among these circumstances was the fact that Bishop was a man whose size agreed with that of the robber. Search was made for him, and he was found at a house of which he was the sole occupant. He received his pursuers with reserve, but with no apparent fear or guilt. His person, and then the house, were searched for the pistol and the money, but in vain; no traces of either were discovered. His clothing exhibited no appearance of the struggle, except upon the bosom of his shirt there were some dark stains which appeared like mud from the swamp, and in his hair there were some hemlock leaves.

If Bishop was the robber, he had evidently changed his outside apparel; but the moment Jameson saw him, he was convinced that the man who had robbed him stood before him. Bishop was arrested. The magistrate before whom he was taken, after a close and well-contested examination, committed him to jail, to await the action of the grand jury. Within the space of three weeks of the commission of the crime, he was indicted and brought to the bar for trial. Such was the alacrity with which crime in those days was followed up.

The celebrated Elisha Williams, then one of the most brilliant and successful lawyers in the State, was retained for the defense, and a trial of unusual interest took place. Hon. Joseph C. Yates, afterwards governor of the State, presided. One of the principal grounds upon which Mr. Williams rested the defense was the identity of the accused. So ably and adroitly did this great advocate manage the defense, so searching was his cross-examination of Jameson, that the escape of the prisoner seemed probable, notwithstanding the great ability and power with which Richardson

conducted the prosecution. He was thoroughly convinced that Bishop was the real criminal. Stimulated by professional pride and an honest desire to punish a guilty wretch, he made every exertion in his power to succeed. The first day of the trial ended with Jameson still in the witness box. During the day, the district-attorney learned that when Bishop was arrested, he wore a pair of perfectly new shoes. This circumstance suggested to Richardson that perhaps in the struggle with Jameson, the accused had left one or both of his shoes in the marsh where the crime was committed. So thoroughly did this thought impress itself upon his mind, that he determined to satisfy himself by searching the ground, and two constables with assistants were immediately sent there with orders to search, and, if need be, turn over every inch of the ground where the struggle occurred. The trial was resumed the next morning. Noon came, and the prosecuting attorney had exhausted nearly all his evidence, but it was apparent that he had made out at the best only a doubtful case, against which the eloquence of Williams would thunder like a terrible bombardment on a weak rampart. No tidings were received from the absent officers. After the recess for dinner, he again resumed the case, placing upon the stand his last witness. He protracted his examination with the hope of lengthening out the case until the return of his men, but still they lingered. Often during the cross-examination did the anxious attorney walk to a window near the bar, which commanded a view of the road over which they must pass in returning; but just as he was about to rest the case for the people, the officers arrived, and he was secretly notified that their search had been successful. To him the case now reached a point of dramatic interest. Would the shoe fit the prisoner?—would the court permit him to ascertain this?—were the absorbing questions with him now. After a moment's reflection, he arose and stated to

the court that he was nearly ready to submit the case, but he would beg a moment's time to consult as to the propriety of introducing other evidence. This request was readily granted, and a short recess was directed, during which he privately examined the shoe which the officers had found. It was very large and heavy. From the heel strong iron nails protruded, and the soles were of unusual thickness. It was found very near the spot where Jameson fell, tightly wedged between two large roots, and nearly covered with mud. In the mind of Richardson, there was no doubt but that the shoe belonged to Bishop. If it was so, then his doom was sealed, and the triumph of the young attorney would be great as well as righteous. After the lapse of fifteen minutes, he returned into court, and announced his readiness to proceed with the case.

"Have you any further evidence, Mr. Richardson?" asked Judge Yates.

"I have," was the reply; "but before proceeding, I desire to ascertain whether a shoe which I have will fit the prisoner's foot or feet, and I ask your honor that the sheriff may make the necessary trial."

"Do I understand the counsel aright? Is it possible that he proposes to interrupt the proceedings of this court for the purpose of trying an experiment, for the purpose of making testimony?" said Williams, warmly.

"I mean to be understood that I have a shoe, which has just been found on the ground where this robbery occurred. I think it belongs to the prisoner, and I ask that the sheriff may ascertain whether it does or not," said Richardson.

A livid paleness overspread the features of Bishop at these words, which was noticed by his quick-eyed counsel, who, with all his energy and powerful rhetoric, resisted the motion. But the court directed the sheriff to remove the prisoner to a private room, and with proper assistants try the shoe on his foot.



This was soon done, and in a short time the officer returned into court and reported that the shoe exactly fitted the accused. This circumstance led to the conviction of Bishop.

Mr. Richardson continued to discharge the duties of prosecuting officer under the large district system until the year 1818, when the duties of district-attorneys were confined to a single county. He was then appointed district-attorney for Cayuga county. His term of office continued until January, 1821, when it expired, and John Porter, of Auburn, was appointed in his place.

Mr. Porter is still a resident of Auburn ; for many years he occupied a prominent place at the bar, ranking with the ablest lawyers of Central New York. In the year 1828, he was appointed surrogate of Cayuga county, discharging the duties of that office until the year 1836. He represented the seventh Senatorial district in the State Senate for the term of three years, and as a member of the Court for the Correction of Errors, the able opinions which he wrote, during his Senatorial term, exhibit a high degree of legal learning and judicial ability.

He continued to practice until within a short time ago, retaining the confidence and esteem of the people.

Warren T. Worden, a contemporary of Mr. Porter, and lawyer of very decided ability, still continues in practice at Auburn. Michael S. Myers, a lawyer of great respectability, is also one of Mr. Porter's contemporaries. These three gentlemen are the only surviving representatives of the old Auburn bar, excepting the Hon. William H. Seward, who retired from practice many years ago.

The Cayuga bar has always been one of the ablest in Central New York ; many of its members have occupied some of the highest positions under the State and national government.

The name of John W. Hurlbert ranks among the ablest and most eloquent advocates of the State ;



while that of George Rathbun stands full as high on the roll of fame. A long list of honored and distinguished names might be taken from its roll.

After Richardson's term as district-attorney expired, he continued the practice of his profession, with some interruptions, until January 8, 1827, when he was appointed, by Governor Clinton, first judge of the Cayuga Common Pleas, a position which he held nineteen years in succession.

The manner in which Judge Richardson discharged his judicial duties gained him universal respect. His legal learning and long experience at the bar rendered him familiar with the rules of evidence, with precedent, with the common and statute law.

He was a man of strong feelings, somewhat impetuous in his nature, sometimes exhibiting on the bench a warmth and hastiness incompatible with the character of a judge; but this was only on rare occasions.

His deep-seated sense of right and justice rendered fraud and crime odious to him, and he was in every sense of the word a terror to evil doers.

Few men ever sat upon the bench with more native dignity than Joseph L. Richardson; dignity was a characteristic which never forsook him, even in those instances when his hasty temperament usurped the dominion of his naturally well-balanced mind.

There was in him a vein of humor, a strong flash of wit and pleasantry, which often gave light and beauty to his intellect. This feature of his character often appeared while on the bench, much to the amusement of the bar. During his extensive judicial career, numberless amusing instances of his ready and graceful wit occurred, which will long be remembered by the older members of the bar.

A negro, known by the name of Bill, was once convicted in his court of the crime of burglary. He had long been a resident of Auburn, and for several years was a sort of privileged person in the village. At length he acquired the habit of thieving on a small

scale, and was brought before Judge Richardson, who discharged him, after inflicting a small fine.

Profiting nothing by these admonitions, he at last committed the crime for which, as has been stated, he was convicted. When Bill was brought in to receive his sentence, he was ordered to stand up.

“You have several times been before this court,” said the judge, “and the light punishment you received has been of no advantage to you, and now the people have come to the conclusion, that they must either lock up their property or have you locked up, and they have concluded to have you locked up; and therefore the sentence of the court is, that you be sent to hard labor in the State prison for the term of ten years, and the court indulge the hope, that during this term, you will reform, or at least forget how to pick locks, or in case your memory continues intact, we hope that during your imprisonment, locks may be invented which you will not be able to pick.”

Judge Richardson was tall and commanding in his person. His features strongly resembled those of Andrew Jackson, and indeed, he resembled the old hero in his manners and general appearance. He possessed those qualities that endeared him to his family and to his friends. He was a true, unvarying friend, but as an enemy, unrelenting and bitter while the reason for enmity continued; yet generous and prompt in his forgiveness of an injury.

He possessed that congeniality with spiritual truths, which is the best evidence of a Christian life. His love of the church to which he belonged, his ardent devotion to her ancient, ever-living, fresh, and beautiful ritual, evinced his strong attachment to the worship of his Maker, his allegiance to the great truths of revelation, and his delight in its lofty and purifying manifestations.

Judge Richardson died at Auburn on the 15th day of April, 1853, in the seventy-seventh year of his age.

## DANIEL S. DICKINSON.

How the Master Spirits of Our Times may be Divided.—The Qualities of Mr. Dickinson's Mind.—Considered as an Advocate.—Ruskin's Comparison.—Statesmen Degenerated into Politicians.—Dickinson's Birth.—His early desire to become a Lawyer.—His Father decides to Apprentice him to the Trade of a Clothier.—His Conversation with his Father on the Subject.—He Commences a Trade and his Education at the same time.—His Progress.—Learns Surveying.—Completes his Trade.—Commences Surveying and School Teaching.—Dickinson a Witness in Court.—Amusing Cross-examination.—Who were your Teachers?—Farrand Stranahan.—His Advice to Dickinson.—Dickinson decides to commence the Business of a Clothier.—His sudden change of Purpose.—Makes the Acquaintance of Lot Clark.—Enters Clark's Office as a Student at Law.—Discouraging Circumstances.—Clark proposes to assist him.—Visits Albany with Clark.—Interesting Interview with Chief Justice Savage.—The Pleasing Result.—The Prediction.—Dickinson Admitted to the Bar.—Commences Practice.—His Success.—Removes to Binghamton.—Professional Progress.—John A. Collier.—Incident before Chancellor Walworth.—Dickinson Elected to the State Senate.—Senatorial Career.—Speeches in the Senate.—Dickinson as a Member of the Court of Errors.—Nominated for Lieutenant-Governor.—Defeat.—Again Nominated and Succeeds.—Character of his Speeches.—Anecdote of Lord Tenderden.—Dickinson's Knowledge of the Scriptures.—Speech at an Agricultural Fair.—Political Activity.—Nominated for United States Senator.—Is Confirmed.—First Speech in the Senate.—His other Speeches.—Amusing Scene.—Senator Badger.—Senate in Session not to be sneezed at.—His Relations with Mr. Webster.—Pleasing Letter from Mr. Webster.—The Reply.—Convention of 1852.—Dickinson Sustained by Virginia for President.—Retires from the Senate.—The Civil War.—Dickinson's Efforts in behalf of the Union.—Elected Attorney-General.—Important Trials Conducted by him as Attorney-General.—A Judgeship in the Court of Appeals offered him.—Declines.—Declines several other Important Positions.—Appointed District-Attorney for the Southern District of New York.—Nature of the Office and incidents connected with it.—Attacked with slight illness.—Sudden Death.—Action of the New York City Bar on his Death.—Meeting of the Broome County Bar.—Effect of the Intelligence of his Death at Binghamton.—In the Senate and Legislature at Albany.—The Events of Thirty-eight Years.—Mr. Dickinson's Literary Talents.—An Accomplished Letter Writer.—Extracts from Letters to his Wife and Daughters.—Dickinson as a Poet.—Extract from the Preface to his Poetical Works by his Daughter, Mrs. Mary S. D. Mygatt.—Poem written a few days previous to his Death, and dedicated to his Wife.

It has been said that the master spirits of our times may be divided into three great classes, the characteristic features of which are sometimes blended in a single individual, but generally strongly distinguished from each other. First, may be ranked those whose

genius is kindled by the divine enthusiasm of poetry, eloquence, and the faculty of selecting and combining lofty, pleasing images, with that creative faculty which embodies and animates them; faculties, which, displayed in various modes, and evolved in different degrees, by exercise and cultivation, are the sources of all that adorns and much that gladdens life.

Distinct from these may be placed the men of theory and abstraction—the discoverers and teachers of great truths and general principles. Lastly, those born for the management of affairs, and formed by nature for the collisions and contests of active life; who, without waiting for the gradual formation of particular habits, assimilate themselves at once to their station, and discharge whatever duties may be imposed upon them, with as much ability as if their whole lives had been spent in the minutest detail of that single employment. This last appears to have been the most usual form in which American genius has hitherto exhibited itself.

Daniel S. Dickinson possessed a mind which united many of the brilliant qualities of the first, with some of those of the third order. On his moral portraiture are discovered those features which render him a representative of our general national character.

With many qualities in common with the poet, and partaking somewhat of the character of the philosopher, the discipline of the logician, the practicability of the statesman, he may be placed, if not at the head, certainly among the first of the men formed for the discharge of great duties at the bar, in legislative business, and in the diversified scenes of active life.

Inspired by a consciousness of his own mental powers, aided by an iron determination, and prompted by a laudable ambition, he submitted to the vigils of the lonely, self-taught student—penetrated the depths of science and philosophy—entered those classic fields where the accomplishments and graces of the mind can only be attained—mastered the great principles of



judicial knowledge—laid his hands upon those honors which dazzled his youthful ambition—raised himself to the sphere of the ablest lawyers and the most gifted statesmen of his times.

The purity of his private life leaves little room for those exceptions and deductions, which too frequently detract from the fame of the gifted and the great. Not that his was a faultless character—no such character exists; but his imperfections were so controlled by a dominant integrity, so subdued by an unassuming piety, that his better nature triumphed over them all, holding them subservient to the dictates of that being “unto whom all hearts are open, and from whom no secrets are hid.”

Considered as an advocate and orator, he certainly had few superiors. He knew how to touch those chords of the human heart which vibrate responsive to sympathy; he was unseduced by imagination, though no stranger to its inspirations—untainted by passion, though susceptible to all healthy and legitimate emotion—enthusiastic, but guided by a discerning and well balanced mind.

As Ruskin said of a certain architect, it was one of his chief virtues, that he never suffered ideas of outside symmetries and consistencies to interfere with the real use and value of what he did. If he desired a window, he opened one; a buttress, he built one. His intellect could fit itself to all service, height of shaft, breadth of arch, or disposition of ground plan. It could shrink into a turret, expand into a hall, coil into a staircase, or spring into the towering spire, with undegraded grace, and unexhausted energy. Whenever he found occasion to change in form or purpose, he submitted to it without the slightest loss, either of unity or majesty. So with the oratorical powers and capacity of Daniel S. Dickinson, he could adapt them to time, place, or circumstances, with the undefined flexibility of Ruskin's architect.

An English writer has said, that the world is



wearied with statesmen degraded into politicians, and orators who pander to the tunes of the times for popularity which their abilities and endowments cannot command. There was nothing of this searching after ephemeral popularity—this distinctive feature of cunning politicians—in Mr. Dickinson; he occupied a higher and better sphere—a sphere that can only be attained and held by the power and influence of a commanding intellect.

Whoever met him in the social circle, whoever listened to his fresh, happy thoughts, uttered in the unstudied facility of familiar conversation, replete with epigram and point, whoever saw him amid those home scenes, where, as the husband and the father, he was the center of the deepest affection, and where the sunlight of his nature was undimmed by the cares of state or professional duties,—could discern those powers of mind which commanded the respect of “listening senates,” but they would see in his playful humor, in his loving gentleness, little of that spirit, which, when crime was to be punished, iniquity exposed and fraud lashed in its lurking place, could be roused into storms of the most terrible invective, or changed into withering, blighting sarcasm.

Daniel Stevens Dickinson was born at Goshen, Litchfield county, in the State of Connecticut, in the year 1800. His father inherited the stern, inflexible virtue of his native New England. When Daniel was six years old, he removed with his father to Guilford, in the county of Chenango. As soon as he was old enough, he was sent to a common school in the neighborhood, where he continued until he was sixteen years of age. At this period he began to seriously consider what vocation would be most congenial to his taste, and he decided to adopt the legal profession; his decision was permanent, though the limited means of his father then prevented him from commencing a course of studies which he so much desired.

As he was not inclined to the life of a farmer, his father proposed that he should learn some mechanical business; to this the young man objected, begging for permission to commence the study of law. At length his father consented to accompany him to Oxford, for the purpose of ascertaining of a lawyer there, the expense of preparing for the bar. After a careful investigation, the elder Dickinson became convinced that the expense would far exceed his means, and he at once informed Daniel that he must surrender all thoughts of becoming a lawyer. This was a serious disappointment to him—the hopes which he had indulged were suddenly dispelled; and with a heavy heart he commenced his journey home. For several miles he rode silently by the side of his father; his thoughts were busy with the devious future; he had built a tower and city within the Shinar of his own heart, where, forgetful of the present, he dwelt in the anticipations of the future.

“Father,” said he, suddenly breaking the long silence that had existed, “do you remember what Robert Bruce said, when he was driven by his enemies into a gloomy glen, where he had nothing but straw to sleep on?”

“I remember the circumstance as related in history, but I cannot repeat the words. Can you?” said his father.

“Yes, sir. He said: “‘Though I am driven to this gloomy, dismal glen, with no shelter but this old hut, yet I feel conscious that I shall one day be King of Scotland,’” was the reply.

“What made you think of that just now, Daniel?”

“Because, father, I want to be a lawyer just as much as Bruce wanted to be king; and though there is but little prospect now of my ever becoming one, I feel that I shall some day be a lawyer, and a good one too,” said the young man.

“Daniel,” said Mr. Dickinson, kindly, yet firmly,

“you must give up that idea now. You see it is beyond your reach and mine, and you must commence learning a trade.”

“Well, father, I shall obey you and learn a trade, but I tell you, I shall never give up the idea of studying law,” said Daniel.

“But you cannot succeed without help. Who do you suppose will help you?” asked Mr. Dickinson.

“I will help myself, when the time comes, as Robert Bruce did,” was the firm reply; and the conversation ended.

Soon after this, young Dickinson was apprenticed to a clothier in the village of Guilford. With his characteristic cheerfulness and obedience, he submitted to the arrangement.

With his apprenticeship he commenced the great work of self-education; the loftiest effort of which the human mind is capable. Every leisure moment was devoted to his books; they were his constant companions—the source of his delight—the fountain of his pleasure; and he might have adopted the language of Horne Tooke, when he said to Erskine, “if you had obtained for me ten years of life in a dungeon, with my books, pen and ink, I should have thanked you.”

With the assistance of a clergyman in the neighborhood, who was a ripe classical scholar, Dickinson succeeded in attaining a practical and correct knowledge of Latin. As a reward for his weary, toilsome study, he was enabled to read with perfect facility the precise elegance and harmonious utterances of Virgil, Cicero, Horace, and Livy; while the pages of Cæsar and Tully, the one the most elegant, the other the most eloquent of Romans, enlivened his intellect and chastened his imagination.

It was his delight to contrast the rude speech of the old patrician ages, with the artificial graces of the declining republic. In after years, while speaking to a friend on this subject, he remarked, “it is

strange that supercilious effeminacy and insipid elegance is the sure precursor of a nation's decay."

In addition to his advancement in the languages, he made considerable progress in rhetoric, logic, mental philosophy and surveying.

"You would be astonished," said he one day, to a student in his office, who is now an eminent lawyer, "did you know how much progress one can make in any study, by devoting to it but one hour in each day. In that way I learned the science of surveying."

At length the years of his apprenticeship wore away, and his time was his own. But as he was, in many respects, an excellent scholar, capable of teaching the languages and the higher branches of mathematics, and also a competent surveyor, he abandoned the trade which he had learned, and entered upon the duties and responsibilities of a teacher. When not occupied in school, he was engaged in surveying lands, and adjusting the boundaries of the farms in various parts of Chenango county.

This latter occupation made him a witness in the numerous ejectment suits, which at that period were brought to settle the conflicting titles of the land-holders. During his attendance at court the examination of the witnesses, the argument of counsel, the charge of the judge, were closely watched, and keenly observed by the young surveyor, and thus each trial to him was a practical and valuable lesson in the study of law.

His evidence upon the lines which he formed and established was considered conclusive. He gave his testimony in that self-possessed, intelligent manner, which rendered it effective.

Occasionally, however, he was attacked by some opposing lawyer, who on the cross-examination would attempt to destroy the force of his evidence. On one occasion, he was introduced as a witness in a trial which took place at Cooperstown.

Having given his evidence as to the quantity of land contained in certain boundaries, described by a map which he had made, the opposing lawyer commenced as follows :

“Mr. Dickinson, at what institution did you learn the art of surveying?”

“At a pretty large one, sir,” was the reply.

“Well, sir, where was it?”

“Wherever and whenever I could gain time to study it.”

“Then you never learned surveying as a science, did you?”

“Yes, sir; I learned it as a science; but not at any institution of learning.”

“Who was your instructor, sir?”

“I had the very best instructors, sir.”

“Well, name them.”

“My books, my compass, my pencil, and my own brains. I suppose these are the principal things I should have depended upon at any institution, especially the latter article,” said Dickinson.

The lawyer, who was a surveyor himself, and aided by a professional engineer at his side, believing that the self-taught surveyor could be easily disposed of, commenced a rigid cross-examination, in which he used all the technical tricks of the art, in the hope of entangling the back-woodsman, as he termed Dickinson; but it soon became apparent to the judge, jury, and bar, that the advantage was with the witness. In no instance did he falter, waver or hesitate, and he left the stand in triumph.

The late Farrand Stranahan, then a distinguished and learned member of the Otsego bar, and subsequently an eminent member of Congress, was the lawyer who tried the cause for the party who subpoenaed Dickinson.

He was exceedingly gratified with the manner and acquirements of his witness. When the trial was over, he invited the young man to his office.



“Mr. Dickinson,” said he, “I am pleased with your instructors in surveying, particularly the one you called brains. I believe you have a pretty large sized pattern of your instructors always with you, and my opinion is that they will yet do something handsome for you. Take my advice, and study law. I believe you will succeed at the bar; your practical instructors, sir, will lift you to a very high position.”

The young man assured Mr. Stranahan that he had always intended to become a lawyer; but as his means were limited, he had not been able to commence his studies.

“Commence at once, young man—commence at once. You need have no fears; you will make your way to the bar, and I shall hear of you there, too. Be resolved to succeed; master the law as a science; do not play in its shadows, but enter its depths—take the open, the deep sea, and you will at length come proudly into port,” said Mr. Stranahan.

This advice, coming from a man so distinguished, greatly encouraged Dickinson, and he resolved to profit by it. How often have words, thus kindly spoken by men of influence and position, given struggling merit a new impetus, reconciled it to sacrifices, to inquietude, and to intense labor. Such words often inspire a hope which in the fullness of certainty, in the anticipation of success, gives glimpses of the reward of toil and self-denial.

In the year 1821–22, Mr. Dickinson was engaged in teaching school at Wheatland, New York. Borrowing Blackstone’s Commentaries of a lawyer in a neighboring village, he commenced the study of law. Never satisfied with the surface of things, he studied that great work with a severity, patience, and industry which rendered him master of it.

In the year 1822, he was married to Miss Lydia Knapp, a lady of many personal and intellectual charms. This union resulted in a long life of domestic happiness. The following extract from a letter

written to Miss Knapp, in October, 1858, attests his affectionate regard for his wife :

“It was thirty-six years ago yesterday, since I married your dear aunt. Oh, how many lights and shadows of life have flitted by during those eventful years! How many joys have sent their refreshing influences—how many poignant and unutterable griefs have caused the heart to bleed with anguish too terrible for description! But a kind Heaven has dealt graciously with us, and we have learned to remember that this is not an ‘abiding city,’ and that the loved and the lost, who have gone before us, will not return to us, but we shall go to them. This marriage gave me a faithful, devoted and affectionate wife, and her relatives have ever been as dear to me as my own.”

A beautiful poem, written a few days before her death, and dedicated “*To Lydia*,” appears at the conclusion of this sketch.

After his marriage, in view of the many expenses of a legal education, he decided to engage for a time in the occupation which he had learned. Accordingly, in the spring of 1823, at the solicitation of the citizens of Columbus, Chenango county, he removed there, and commenced the erection of a small building, which he designed for a cloth dressing and wool carding shop.

When the building was partly enclosed, he was one day at work upon it. Those who were engaged with him noticed an unusual reticence in his manner, and that he seemed deeply engaged in study. Suddenly he threw his hammer behind a door, exclaiming, “There, I shall never touch that again ;” then putting on his coat, he left the building without uttering another word. Seeking his wife, he informed her that he had decided to leave the business in which he was engaged, and to commence preparing for the legal profession.

With true devotion and a lofty ambition she encouraged him in his project, assuring him that he

had the ability to succeed, and that she would make any sacrifice to aid him.

He returned again to the business of teaching and surveying, employing every leisure moment in the study of law ; in this way two or three years passed away.

While attending the various courts in central New York as a witness, he made the acquaintance of the late Lot Clark, who, in those days, was a resident of Norwich, New York. Mr. Clark was eminent at the bar, and widely distinguished in the political, financial, and legal affairs of the State. His discerning and sagacious mind discovered in the young surveyor abilities of the highest order. Learning that he desired to study law he encouraged him in the undertaking, invited him to pursue his studies in his office, generously offering any assistance in his power.

The friendship of Lot Clark was the circumstance which led to the future success of Mr. Dickinson.

Completing the necessary arrangements, he soon became a student in that gentleman's office, and, under his instructions, commenced the regular prosecution of his studies. To his surprise, Mr. Clark, in a few days, discovered that his student had already acquired a very correct knowledge of the elementary principles of law, and was well versed in the rules of evidence—that by devoting a few months to the study of the practice, he would be well qualified for his admission to the bar.

But there existed an impediment in the way, which seemed almost insurmountable. The rules of the Supreme Court at that time required seven years' study in the office of some practicing lawyer, before a student could be admitted to his examination ; and, although Dickinson had effectually pursued legal studies for at least three years, he was considered by law as having now just commenced his legal education, not having studied according to the rule of the

court. Years must elapse before he could even be examined for his admission to the bar.

“I am determined to persevere,” said he one day to Clark, after he had been in the office a few weeks; “though I hardly know how I shall sustain myself and family for so long a time, but I believe there will be some way provided.”

“Yes, persevere, make yourself thoroughly acquainted with the practice and the rules of the courts; when you have succeeded in this, I will see what else can be done for you,” said Mr. Clark.

Accordingly, Dickinson applied himself to his studies as he was directed; the business in the office was extensive, and hence he had an opportunity to learn the practice from actual experience, as well as from the books. He did not neglect to review the common and statute law which he had previously read; in this way eight months passed away, when, one day Mr. Clark said to him:

“I think you can now pass a very creditable examination.”

“I feel confident that I can; but what will all this avail me?”

Mr. Clark informed him that the chief justice sometimes suspended the rule and admitted students *ex gratia* to their examination.

“It is very rarely done, I know,” he continued; “but I have thought it best for you to accompany me to Albany next week; the General Term will then be in session there; I will introduce you to Chief Justice Savage, with whom I believe I have some influence, and endeavor to induce him to give you an order for your examination in the class which will be examined at that term.”

A new world of hope opened before Dickinson at this suggestion, and he eagerly acceded to it.

The first Monday of October, 1828, saw Daniel S. Dickinson at Albany for the first time. He, who in a few years was destined to return there—to enter its



Senate chamber the gifted senator, and, as the lieutenant-governor of the State, to become its dignified and accomplished presiding officer, and the profound statesman, now, obscure and unknown, awaited with trembling hope the fiat which would place him upon the stepping-stone to all those honors.

In the course of that day, Mr. Clark called at the rooms of Judge Savage; after some general conversation, he said to him:

“Judge, I have a student whom I wish to have admitted to the class for examination this term.”

“You know, Mr. Clark, that the clerk is the proper person to make the order for examination of students,” said the judge.

“But this is a case, Judge, where you alone have the power to make the order; for, although he is a well-read student, he has now actually pursued his studies within the rule, but a little over eight months, and I desire that you will suspend the rule and give him an order for his examination.”

A shade passed over the brow of the judge, as he listened to this request.

“Mr. Clark,” said he, “I should be most happy to oblige you in this or any other matter, but my duty will not permit me to grant the order you desire. I have decided to admit no more students to examination who have not complied with the rule. I have occasionally done so, I am sorry to say, where the student was unworthy; and unless it is a very extraordinary case, I shall not vary the rule again.”

“I consider this to be a very extraordinary case, or I certainly should not have applied to you,” said Mr. Clark.

“There is but one way for me, and that is to rigidly adhere to the practice established by long usage,” said the judge.

“Well, Judge, will you hear the circumstances under which the young man, through me, makes this application?”



“I think it will be useless, but to oblige you, I will; proceed, Mr. Clark.”

“I propose that the young man shall himself relate the circumstances,” said Mr. Clark.

“I think that is not worth while,” said the judge.

“Judge Savage, I ask as a particular favor, that you see and talk with this young man, and if, after that, you decide to deny his request, I shall be satisfied.”

The judge consented, and in due time Dickinson was alone with the chief justice of the State of New York. He knew that the hopes of coming years rested upon the result of that interview; that if his request was denied, several weary years must elapse before he could attain that goal which from his childhood, he had so ardently desired to reach. His friend had informed him that there was some doubt as to his success, and therefore he entered the presence of the man who was to decide his fate, conscious that he was to plead his own cause, and summoned all his self-possession and manhood to his aid.

Judge Savage received him with that courteous dignity for which he was distinguished; he listened attentively to the story of his life, as with simple, unaffected eloquence, he “ran it through, even from his boyish days.” He spoke of his early desire to study law, of his struggle to obtain a classical education, how, when the day’s labor was over, he applied himself to his studies—how, when attending the carding machine, with his book by his side, he became acquainted with the authors of antiquity,—and how he worked out those problems which gave him his knowledge of surveying, and how he commenced and continued the study of law, down to the time when he first became acquainted with Mr. Clark; but he made no appeal for sympathy; he rested his cause on the bare, unvarnished facts; he answered promptly and respectfully all the numerous questions asked him by the judge.

The interview lasted an hour and a half, and when Dickinson left the room, he carried in his hand the order for his admission to the class of students which were to be examined the ensuing evening. With a light and joyous heart, he returned to his hotel, where he found his friend anxiously waiting for him.

“Well, how did you succeed with the chief justice?”

Dickinson replied by handing him the order of Judge Savage. Clark rapidly glanced over it.

“You have won your first great case,” said he, “and it is indeed a great one; what is better, you won it yourself. As you have succeeded, I have no hesitation to inform you that Judge Savage utterly declined to grant this order on my request. But I did not dare inform you of it, fearing that you would be discouraged and refuse to make any further effort.”

“I made no particular effort, Mr. Clark; the judge seemed willing enough to grant the order. I simply related to him, in a plain way, the history of my life, and answered all his questions as correctly as I knew how.”

“Exactly, sir; you have the talisman of success, the girdle described by Homer, which gave an invisible power. You were modest and unassuming, but deeply in earnest; a strained effort would have ruined your cause with the judge. Now for your examination. Give this paper to the clerk, he will enter your name on the list of students to be examined; be on hand promptly, and to-morrow you will be a lawyer,” said Clark.

That day the chief justice and Lot Clark met at a dinner given by an eminent citizen of Albany, to the judges and members of the bar.

“Judge,” said the latter, “I am happy that you decided to grant my student an order for his examination.”

“He is a young man of extraordinary abilities, Mr. Clark,—a person of learning. Why, sir, I consider him a good lawyer already—he will be an ornament to the profession, and in a short time; he has the ability to make his mark in the world, and he surely will,” said the judge.

Dickinson passed a very creditable examination, and was duly admitted to the bar.

Chief Justice Savage left the bench of the Supreme Court, in September, 1837, but before that event, Daniel S. Dickinson occupied a seat with him in the Court for the Correction of Errors—then the highest tribunal in the State, and with him adjudicated the great legal questions which came before it, and their opinions are committed to posterity in those reports which record the decision of the New York courts.

Immediately after his admission to the bar, Mr. Dickinson opened an office at Guilford and commenced his practice. Such had been the habits of his life, such his intercourse with the people, that he had been enabled to study deeply the great book of human nature—a study more essential to lawyers than to any other class of men; for the hopes, the fears, the frailties, and the passions of men, are matters which they have constantly to encounter. Mr. Dickinson’s practice soon became the source of a competent income, and his respectability as a lawyer was established by the number of his clients and his success in their behalf. His occupation as a surveyor had given him a general acquaintance with the people, with the situations of the lands in central New York, and the titles thereto. These circumstances were of immense advantage to him; to them he was indebted for the early reputation which he attained as a real estate lawyer. Actions of ejectment at that period occupied very much of the attention of the courts; few lawyers better understood the complications of those actions than he.

He had been fortunate in making the acquaintance of several eminent business men at Binghamton,

through whose influence he was induced to make that beautiful town his future home. He removed there in June, 1831. Here great professional success awaited him—a success which soon gave him a position with the ablest lawyers in the State.

He was constantly engaged in the trial of causes, and in many respects he was peculiarly qualified for an advocate. In those actions in which he could touch on grave, gay, and pathetic subjects, he soon became powerful, “shedding on the world of *nisi prius*, hues of living beauty,” touching on the verge of a sphere which Wirt himself would not have disdained to occupy.

Superior to any thing like trickery or chicanery, he yet was subtle, cautious, and wary. A quick and accurate observer of men and things, as has been said of another, he looked at them from a point of view in which it was his particular business and interest to observe them. Thus, he could “weave a web of difficulties for an opponent something like the silken threads in which the shepherdess entangled the steed of Cervantes’ hero, who swore in his fine enthusiastic way, that he would sooner cut his way to another world than disturb the least of those beautiful meshes.”

One of the most powerful competitors with whom Mr. Dickinson had to contend was John A. Collier, a man by whom it was no disgrace to be overthrown. Close, terse, logical, unimpassioned, but deeply learned in the law, particularly in evidence, in contracts, in equity and in the common law, he was one of those leading spirits which gave to the bar of the State its superiority. His abilities as a politician were scarcely less remarkable than his legal accomplishments. As was said of Lord Ellenborough, he was a real chief—such as the rising generation of lawyers may read of, or figure to themselves in imagination, but may never behold to dread or to admire.

He was not only a rival of Mr. Dickinson at the



bar, but his powerful opponent in the political field ; for years the intellectual contests of these men struck out those vivid sparks which exhibited the powers of the combatants. Though these contests were not entirely free from acrimony and irascibility, yet the courtesies and amenities of the profession were generally observed by both of them.

In the summer of 1844, they were engaged in the argument of an appeal from one of the vice-chancellors to the chancellor, at Saratoga, in a matter connected with a Chenango county Bank. During the argument, a young lawyer, who had just been examined for a solicitor before Judge Parker, at Albany, entered the room ; he was there for the purpose of taking the solicitor's oath before the chancellor. His time was limited, but he waited patiently until Mr. Collier closed a long, and to him exceedingly dry speech. Mr. Dickinson immediately arose and commenced his remarks. As it was impossible for the young man to wait the conclusion of another argument, he approached the lawyer and said :

“ Will you be kind enough, sir, to stop speaking long enough for me to take the solicitor's oath ? My great haste is my apology for asking this favor.”

Mr. Dickinson ceased speaking, and regarded the intruder with a look of surprise, mingled with some severity, which, however, instantly passed away, and he replied :

“ Oh, certainly, certainly, sir ; we need one more solicitor in the State of New York, and you shall be the one, for I see you intend to be on time.”

The young lawyer having taken the oath, signed the roll, thanked Mr. Dickinson, and retired. He entered into practice, became eminent at the bar, and in a few years met Mr. Dickinson as his opponent in a very important case.

“ I see you do not remember me, Mr. Dickinson ; perhaps you may recollect, some years ago, at Sara-



toga, you informed a young man about to take the solicitor's oath, that the State of New York needed just one more solicitor, and assured him that he should be the one, as he was on time. I am that fortunate solicitor."

"So you are a solicitor by my permission, are you?" said Dickinson, laughing, and taking the lawyer by the hand. "Since then, you have won a position as a solicitor in which you have done honor to the bar and to the State, and therefore, you really were the one that was needed." From that time, to the close of Mr. Dickinson's life, their relations were intimate and friendly.

Yielding to the natural affinity which the American lawyer has for politics, Mr. Dickinson became an ardent political partizan, strongly attached to the Democratic party. His success as a speaker gave him a high position in his party, while his urbanity and geniality rendered him a favorite with the people. He had been at Binghamton but a short time, when he was tendered the nomination for Assembly by the Democrats of Broome county. But professional ambition prompted him to decline, and though he became a powerful champion of his party, he refused all official distinction, until the autumn of 1836. Yielding to the solicitation of his friends, he then accepted the nomination for senator from the Democratic party of the old sixth Senatorial district, one of the largest and most important in the State.

His nomination was highly complimentary to him. He was elected by a heavy majority, and commenced his Senatorial duties on the 3rd day of January, 1837. John Tracy was then lieutenant-governor, and the Democratic party was dominant in the State. Mr. Dickinson was honored by a prominent place on several important committees, the duties of which he discharged with vigor and ability. With a cautious and discriminating use of those rare abilities which he possessed, he soon rose to the position of a leader in a

body composed of men whose singular lucidity of thought and expression, whose versatile attainments, persevering industry, and elevated views, rendered the Legislature of New York conspicuous before the nation.

Mr. Dickinson entered the State Senate at a time when political discussions were strong and fierce ; and, as one of the leaders of the Democratic party, he was the subject of many maledictions. As censure is said to be the tax which man pays for being eminent, he paid liberally for his position. But he encountered this species of warfare with firmness, and in turn assumed the aggressive with such vigor and power, that he was as formidable in the attack as he was invulnerable in defense ; but he always commanded the secret, and often the open respect of his political antagonists.

Some of his speeches in the Legislature won the commendation of all who were not so blinded by party that they could observe nothing bright—nothing meritorious in the utterances of a political opponent. One of the most able and eloquent of his Senatorial speeches was delivered on the 10th day of February, 1837, on the introduction of a bill in the Senate for the repeal of the usury laws.

Governor Marcy, in his annual message to the Legislature, that year, recommended the repeal of the usury laws, and the measure was strongly advocated in the Senate, by the powerful abilities of Samuel Young, of Saratoga. Mr. Dickinson warmly opposed the measure, and, as has been said by another, the discussion of the question led to an animated and interesting debate ; but the agitation ended for a time, and for many years afterwards, as a public question, by the adoption, at the same session, of additional safeguards and more severe penalties against usury. In the course of that remarkable speech, Mr. Dickinson said :

“But the honorable senator from the fourth, Mr. Young, asserts that the usury law prevents *competition*

between money lenders ; that if the usury laws are repealed, money will flow into the State freely, and that there will be an abundance to be loaned at *less than seven per cent.* Who, I ask, believes that this will be so ? Interest is intended to be the fair average value of the use of money ; that it may not reach every individual case is not pretended ; there is an average *moral* rate, and that should be, and is, in contemplation of law, the legal rate. Seven per cent., I assume, is not only a fair compensation for the use of money, but is the average value of its use. Who has ever known a money lender, however unenterprising and stupid, and however humble in his beginning, who has not grown into affluence by an interest of even seven per cent., while his vigilant and enterprising neighbor, who has embarked in other business, has failed to keep pace with the gains of money accumulation ? No one will pretend that a fair competition is prevented at less than seven per cent. The rate of interest in England is five per cent. ; in France, four ; in Holland, three ; and in all the adjoining States, six. Now, where is the capital to '*flow in*' from ? How does the senator from the fourth explain why capital will be invited at an interest of less than seven per cent. when it will not come at seven ? Why does not this liquid substance begin to *flow now* ? Two per cent. has invited England ; three per cent. has invited France ; four per cent. has invited Holland ; one per cent. has invited all our neighboring States, and yet the capital, we are told, refuses to '*flow in.*'

"The senator from the fourth has informed us that one house in New York has paid usury enough to purchase a farm upon the fertile and almost classic plains of Saratoga ; that another has paid sixty thousand dollars of usury within the last year, and that six or eight millions of dollars of usury have been paid within the year in the city of New York alone. I am much obliged for the information ; this explains

all,—it is a sufficient sum to induce the moneyed sharks to pursue the ship of State for a long time to come. If they have succeeded in obtaining this enormous amount while the laws are in force, what, I ask, will they do when they are repealed? . . . . .

“While the senator from the fourth is sheltered behind Jeremy Bentham, he will doubtless think my attempt to assail his impregnable citadel like storming Gibraltar with a pocket pistol; but I have done so upon his invitation, and claim to have both my motives and courage appreciated for even attempting it. If I am annihilated in the struggle, I can say with Hannah More, in her Sacred Drama :

“’Twill sweeten death  
To know I had the honor to contend  
With the dread son Anak.’”

Mr. Dickinson’s speech upon the governor’s message, delivered in the Senate, January 11, 1840, attracted much attention. It was entirely political in its nature, and, as speeches on such occasions usually are, it was made to settle political scores. It was generally commented upon by the press of the State, each political party discovering faults or merits, according to its political tendencies.

He delivered many other important speeches while in the State Senate, many of which bear the impress of the statesman.

Being a senator, Mr. Dickinson was also a member of the Court for the Correction of Errors; and his legal opinions upon the questions adjudicated in that tribunal while he was a member of it were written with that ability and judicial precision which strongly commend them to the legal profession. Some of them clearly demonstrate the principles upon which the great leading cases then before the court of last resort turned. No one can read his opinion in the case of *Stoddard v. Butler*, reported in 20 *Wend.* 507, without



being impressed with the ability, force, and profundity with which it abounds.

Mr. Dickinson retired from the Senate in May, 1840. At the Democratic State Convention, held in the following August, he was nominated for lieutenant-governor; but as his party suffered a general defeat at the ensuing election, Mr. Dickinson shared its fortunes.

“Well, Mr. Dickinson,” said a friend, who met him after the result of the election was known, “how do you relish the result of the election?”

“Oh, the people have very decidedly given me to understand that they do not desire my services, and I honor their judgment, and from the loop-holes of my retreat I will watch the progress of this great Whig game,” was the reply.

Devoting himself to his profession with untiring energy, he left the political field, contented with the honors which he had won. He attended the various circuits in the State, and was often engaged in every important case that was tried at the term. He frequently appeared at the General Term, and in the Court for the Correction of Errors.

It has been said that Mr. Dickinson was not a close lawyer, meaning that he was not bound down to those forms which render the lawyer a mere servile copyist,—a creature of precedent, who hurls decision after decision at his opponent, and charges down upon him with statutes, simply because it happens to be in that case so made and provided: like Juvenal’s grammarian, tremblingly alive to mood and tense, without a philosophic thought, or a liberal sentiment. For this kind of legal closeness Mr. Dickinson had no taste, and was therefore not a close lawyer. But if thorough reading, logical exactness, knowledge of mankind, clear views, perspicuity of thought, a liberal familiarity with legal principles as well as technical rules, joined to ingenuity in illustrating and enforcing his



ideas, constitute a close lawyer, then Daniel S. Dickinson was such.

It is true that he was a man of much imagination; but, in his speeches at the bar, if he interpolated fanciful ideas or sentences, it was with such perfect good taste, that it tended to strengthen and enlarge his subject.

Nothing disgusted him so much as a tawdry, grandiloquent, or labored speech. He was fond of relating the following anecdote of Lord Tenderden, who, though a man of fine imagination, and a poet, would tolerate no undue display of learning and sentiment at the bar.

“It is asserted in Aristotle’s Rhetoric,” argued a pedantic barrister to his Lordship.

“I don’t want to hear what is asserted in Aristotle’s Rhetoric,” interposed the Lord Chief Justice.

“It is laid down in the Pandects of Justinian.”

“Where have you got to now?”

“It is a principle of the civil law.”

“Oh, sir, we have nothing to do with *civil* law in this court.”

Lord Campbell insists that this pun of Tenderden, if it can be called one, was unintentional; like that of Blackstone, who remarks in his “Commentaries,” that “landmarks on the sea shore are often of *signal* service to navigators.”

Mr. Dickinson frequently remarked that there were many at the bar who would be highly benefited by practicing before a judge like Lord Tenderden. His quotations were always lively and appropriate, particularly those taken from the Scriptures. These he often used with elegance, force, and fine rhetorical effect.

From his earliest years he was an ardent admirer of the Bible, regarding it as “a history, the narrative of a multitude of miraculous facts, which skepticism has often challenged, but never disproved—a poem

moral and didactic—a repertory of divine instinct—a collection of the deepest intuitions of truth, beauty, justice and holiness; destined to command, to charm, to sublimate the mind of man; which for ages has been exposed to the keenest investigation,—to a fire which has consumed contemptuously the mythology of the Iliad, the husbandry of the Georgic, the historical relations of Livy, the fables of the Shasters, the Talmud, and the Koran, the artistic merit of many a popular poem, and the authority of many a work of philosophy and science.”

In the year 1842, Mr. Dickinson was again summoned from the duties of his profession to become the standard-bearer of his party in the campaign of that year. He was again nominated for lieutenant-governor, Mr. Bouck receiving the nomination for governor. The result of the election that year exhibits the mutability of politics in our government. The Democracy, which two years previously was prostrated before the Whig party, was again triumphant. The entire Democratic State ticket was elected, and on the third day of January, 1843, he again entered the State Senate, this time as its presiding officer. His various parliamentary attainments and experience prepared him to discharge the duties of this position with rare ability.

In the quickness of his perceptions, in the rapidity and urbanity with which he decided the technical parliamentary questions which constantly occurred in the Senate, he resembled Henry Clay.

During the summer of 1843, he was engaged in conducting certain important actions connected with some mining interests in Pennsylvania. In October of that year, he delivered an address at the fair of the Queens County Agricultural Society. This production was spoken of by the New York papers as “highly able, ingenious, and eloquent.”

“Practical agriculture,” said he, “is coeval with the history of man. The children of Israel, on coming

to the possession of the fair land of Canaan, after wandering in the wilderness forty years, addressed themselves to its cultivation. When the prophet Elijah passed by and cast his mantle upon Elisha, he found him plowing in the field, with twelve yoke of oxen before him, himself with the twelfth; and the servants and oxen of the affluent Idumean were engaged in the same pursuit when they fell a prey to the rapacity of the Sabeans. Many of the most interesting and poetic incidents of the Scriptures are touching the harvesting and gleaning of fields, and rural occupations, and its pages are replete with descriptions of the management of flocks and herds, sheep shearing, threshing floors, and the employments of husbandry. . . .

“The mind of the professional man is engaged with his particular calling, striving to become eminent and useful, struggling, perchance, with rivalry on either hand, and realizing ‘how hard it is to climb the steep where Fame’s proud temple shines afar.’ His mental vision is fixed upon a single object. His mind is accustomed to run in grooves fashioned by his pursuit—all else palls upon the sense, and he too often lives and dies the mere creature of his profession. The merchant is buried in commerce, and the mechanic is absorbed with inventions and improvements. But to the farmer, devoted to no theories, and wedded to no systems, with the ample volume of Nature constantly before him, unfolding her mysteries and spreading out her allurements, the deep fountains of knowledge stand open, and all combines to inspire him with the love of the sublime and beautiful, to store his mind with that practical, useful knowledge which energizes the man’s nature to loftier and nobler pursuits.”

The campaign of 1844 was one of the most memorable political struggles which, down to that period, ever occurred in the nation. Under the lead of Henry Clay, whose many captivating qualities inspired his

friends with fervid enthusiasm, the Whig party rallied in its strength, confident of victory, and there was a time when the defeat of the Democrats seemed inevitable ; but, at that moment, a few unfortunate sentences contained in a letter written by Mr. Clay decided the contest against him. The struggle was such as might have been expected by the antagonism of two such powerful parties.

In this campaign, Mr. Dickinson was peculiarly active ; he was one of the prominent Democratic orators who aided in giving their party its victory.

As one of the presidential electors from the State of New York, in 1844, he gave his vote to the Democratic nominee, James K. Polk, for president.

On the 7th day of May, 1844, Mr. Dickinson retired from the second office within the gift of the people of the Empire State. He closed his career as president of the Senate, in an address of unusual dignity and grace. Seldom has that Senate chamber been a scene of more absorbing interest, than on this occasion ; party strife and political feuds were forgotten in the impressive language of the lieutenant-governor, now about to become a private citizen, with no claim to power, save that intellect which gave him the place he had so ably occupied.

But he was not permitted long to remain the private citizen ; his party had other claims upon him, and his abilities were destined to be exercised in another and loftier sphere of action.

Early in the summer of 1844, a vacancy occurred in the United States Senate, by the resignation of Nathaniel P. Talmadge, one of the senators from the State of New York. As this event occurred during the recess of the State Legislature, Governor Bouck immediately appointed Mr. Dickinson to fill the vacancy. One of the first acts of the Legislature of 1845, was the ratification of his appointment, and Daniel S. Dickinson entered the American Senate as the associate and compeer of Webster, Clay and Calhoun.



The political questions which agitated that body, when he entered it, led to close and animated discussions among those orators and statesmen whose genius had inaugurated an intellectual era of unrivaled splendor, and whose speeches are brilliant elaborations of national policy and diplomacy.

As a recognition of his high reputation and his services in advancing the interest of his party, he was appointed to the responsible and honorable position of chairman of the Committee on Finance.

Mr. Dickinson was soon compelled to participate in the debates which occurred on the great questions then before the nation. His first speech in the United States Senate was delivered on the 2nd day of February, 1845, "Upon the joint resolution providing for the Annexation of Texas." To use his own language, he delivered that speech under circumstances of peculiar embarrassment. The senators from New York had been called upon in the debates which preceded this speech, to respond to certain interrogations; he could not, therefore, avoid acting up to the responsibilities of his situation, and he proceeded to discuss the question in a manner which won the approbation of his constituency and added to his influence in the Senate.

His next speech was delivered February 24th, 1845, on the Oregon question. On the 9th of April, 1846, he delivered his great speech "Upon the North-eastern Boundary; the Right of Search; and the Destruction of the *Caroline*," in reply to Mr. Webster.

"Mr. Dickinson, in his speech on the resolution for terminating the joint occupancy of Oregon, delivered in the Senate, February 24th and 25th, 1846, referred briefly to the course of the government on those subjects, and, in several particulars, criticised and condemned it. In speaking of the McLeod case, he alluded to statements made by the Honorable C. J. Ingersoll, in the House of Representatives, relative to the action taken thereon by the administration, Mr. Webster then being secretary of state. On the 5th



and 6th of April, following, Mr. Webster addressed the Senate, in an elaborate defense of the Treaty of Washington, and in explanation of the other subjects referred to, with which he had been connected, as a member of the government. He denied and denounced in strong terms the statements made by Mr. Ingersoll, and complained of the use made of them by Mr. Dickinson;” his speech being characterized, in these respects, by a good degree of vehemence. Mr. Dickinson replied, with equal earnestness.

The passages between the two senators in this debate, are understood to be the “occurrences alluded to with regret,” by Mr. Webster, in his admirable and magnanimous letter, addressed to Mr. Dickinson at the close of the session of 1850, and by the latter in a corresponding spirit, in his reply thereto.

On the 12th day of January, 1848, Mr. Dickinson addressed the Senate on the question of “The Acquisition of Territory, and the Formation of Governments for the Territories; The Doctrine of Popular Sovereignty, &c.”

His speech, “On Establishing a Government for California and New Mexico, and in reply to Honorable John A. Dix, on the Wilmot Proviso,” was delivered in the United States Senate, February 28th, 1849.

One of the most remarkable speeches which he delivered, while in the Senate, was in reply to Mr. Clemons, of Alabama, in reference to the appointment of a military governor for California. This discussion took place on the 15th, 16th, and 17th days of January, 1850, and created much interest throughout the nation.

Mr. Dickinson made several other speeches while in the Senate, which, with the reports and memorials presented by him during that period, give some idea of the position which he occupied in that body.

The following incident illustrates the manner in which the playful mind and lively wit of Mr. Dickinson often exhibited itself in the Senate.

One day, during the session of the Senate in 1850, while one of the senators was addressing that body, Senator Badger, of North Carolina, was seized with a fit of sneezing, so boisterous and immoderate as to cause great merriment, especially in the galleries. Mr. Dickinson took up a pencil, and in a few moments the senator received the following :

“ A noise in the Senate is quite out of place,  
 If 'tis one that spectators are like to be pleased at ;  
 And a member should know, if outsiders do not,  
 That the Senate in session *is not to be sneezed at.*”

As Mr. Webster and Mr. Dickinson differed in their political sentiments, there was at first naturally some coolness mingled in their senatorial, and perhaps in their social relations. The passage between them on the occasion of the reply of the latter to Mr. Webster in the Senate, has already been referred to. On the death of General Taylor, in July, 1850, and the accession of Mr. Fillmore to the presidency, Mr. Webster was appointed secretary of state. On his retiring from the Senate, he wrote the following letter, which fully illustrates the high esteem in which he held his distinguished Democratic opponent from New York.

“ WASHINGTON, *September 27th*, 1850.

“ *My Dear Sir*—Our companionship in the Senate is dissolved. After this long and most important session, you are about to return to your home, and I shall try to find leisure to visit mine. I hope we may meet each other again, two months hence, for the discharge of our duties in our respective stations in the government. But life is uncertain, and I have not felt willing to take leave of you, without placing in your hands a note containing a few words which I wish to say to you.

“ In the earlier part of our acquaintance, my dear sir, occurrences took place which I remember with constantly increasing regret and pain, because, the

more I have known you, the greater have been my esteem for your character and my respect for your talents. But it is your noble, able, manly, and patriotic conduct in support of the great measures of this session, which has entirely won my heart, and received my highest regard.

“ I hope you may live long to serve your country ; but I do not think you are ever likely to see a crisis in which you may be able to do so much, either for your own distinction, or for the public good. You have stood where others have fallen ; you advanced with firm and manly steps where others have wavered, faltered, and fallen back ; and, for one, I desire to thank you, and to commend your conduct out of the fullness of an honest heart.

“ This letter needs no reply ; it is, I am aware, of very little value ; but I have thought you might be willing to receive it, and, perhaps, to leave it where it would be seen by those who shall come after you.

“ I pray you, when you reach your own threshold, to remember me most kindly to your wife and daughter ; and I remain, my dear sir, with the truest esteem, your friend and obedient servant,

“ DANIEL WEBSTER.

“ HON. DANIEL S. DICKINSON,  
*U. S. Senate.*”

It has been said, by an imaginative writer, that “ letters have souls,” and it is true. If genius has one attribute higher than the rest, one charm more winning than the others, it is the ability to combine in a letter—to express in it, with facility, what the heart dictates ; for, as has been truthfully said, epistles from one friend to another make a near approach to conversation, and we can see more of character displayed in them, than in any productions which are studied for public view. Thus, the foregoing letter and the following reply of Mr. Dickinson exhibit in a perspicuous manner the native generosity and high-toned characteristics of their minds.

“BINGHAMTON, *October 5th*, 1850.

“*My Dear Sir*—I perused and reperused the beautiful note which you placed in my hands as I was about leaving Washington, with deeper emotion than I have ever experienced, except under some domestic vicissitude. Since I learned the noble and generous qualities of your nature, the unfortunate occurrences in our early acquaintance to which you refer, have caused me many moments of painful regret, and your confiding communication has furnished a powerful illustration of the truth, that to ‘err is human, to forgive, divine.’ Numerous and valued are the testimonials of confidence and regard which a somewhat extended acquaintance and lengthened public services have gathered around me; but among them all there is none to which my heart clings so fondly as this. I have presented it to my family and friends as the proudest passage in the history of an eventful life, and shall transmit to my posterity as a sacred and cherished memento of friendship. I thank Heaven that it has fallen to my lot to be associated with yourself and others in resisting the mad current of disunion which threatened to overwhelm us; and the recollection that my course upon a question so momentous has received the approbation of the most distinguished American statesman, has more than satisfied my ambition. Believe me, my dear sir, that of all the patriots who came forward in the evil day of their country, there was no voice so potential as your own. Others could buffet the dark and angry waves, but it was your strong arm that could roll them back from the holy citadel.

“May that beneficent Being who holds the destinies of men and nations long spare you to the public service, and may your vision never rest upon the disjointed fragments of a convulsed and ruined confederacy. I pray you to accept and present to Mrs. Webster the kind remembrances of myself and family, and believe me sincerely yours,

“D. S. DICKINSON.”



After the death of Mr. Webster these letters came to the hands of Edward Everett, whose accomplished and gifted mind at once appreciated their merit and value; he sought the permission to "incorporate them with his labors."

On the eighth day of June, 1845, General Andrew Jackson breathed his last, at the Hermitage. "The event had been expected several weeks, but the shock it produced and the tribute of respect to his memory exhibited on every side," evinced the affection with which the American people regarded him.

Among those who publicly eulogized him was Mr. Dickinson. His eulogy stands as a model of classic purity, excellence, and scholarly beauty. Some portions of it rival the touching and graceful language of Hecuba when speaking of the death of Astyanax.

In the National Convention held at Baltimore in 1852, Mr. Dickinson received the vote of Virginia, and some other votes for president. Being himself a delegate and favoring the nomination of General Cass, whose name was before the convention, the former caused his name to be withdrawn. In declining the honor which was so unexpectedly tendered him, "he delivered an impromptu address, which proved conclusively that the demands of political integrity have a firmer hold upon the heart and the intellect of the good man, than the enticements of ambition."

His address was received with great applause from the immense audience present, while the ladies showered upon him from the galleries such a profusion of bouquets, that one might have believed Flora herself had come to add her offering to the eloquence of the speaker.

It is true that his political opponents attributed the act of withdrawing from the convention, to anything but a magnanimous spirit. First, they alleged that he had but little hopes of the nomination, and no prospect of it; secondly, he believed that in withdrawing, he would produce results which in the end might give him the nomination, &c.



But recent revelations have established the fact beyond a doubt, that had Mr. Dickinson made no pledge to General Cass, and early announced himself as a candidate, as many of his friends insisted upon his doing, he would have received the nomination for president.

In the division which subsequently occurred in the Democratic party in the State, he adhered with unflinching zeal to the Hunker or conservative branch of the party. In this, he was of course bitterly assailed by the opposing faction, and was charged with forgetting his northern birth in his desire to serve his southern friends. The remark which he made, regretting that he was not born in Virginia, was eagerly caught up by the opposition press, and made the subject of many a bitter and censorious newspaper comment.

It is not strange that in his long and eventful political career he often erred, that in the contests at the bar and in the political arena he incurred the enmity of many. Whatever were his convictions of duty, he followed them with the same unconquerable zeal which led Hempden and Sidney to their death.

It is difficult to form an impartial judgment as to the conduct of men who have recently been engaged in the conflicting scenes of political life. Their connection with party, and their habit of viewing subjects in reference to personal aggrandizement, too often obscure the noblest intellect, and convert into patrons of narrow views and temporary interests, those who in other conditions would have been the light of their age.

After retiring from the Senate of the United States, his natural love for the legal profession again led him to the bar. The promptings of his early youth never deserted him; they stimulated him to action on that chosen field of labor and ambition which had cost him so many struggles, and he fell as the conquering soldier loves to fall, gloriously occupying the ground he

WOL, with the sound of the conflict still ringing in his ears.

In the year 1852, Mr. Pierce nominated him for collector of the port of New York, and he was unanimously confirmed; but preferring the large income which he derived from his profession, he declined, though it is one of the most lucrative positions in the State.

He continued free from the trammels of office for several years, until after the great drama of the rebellion opened and closed. Almost with the first gun that inaugurated the civil war he sundered all party allegiance, and ranged himself under the banner of his country. In his own State, in Pennsylvania, and throughout New England, he addressed vast assemblages of people, impressing upon them the necessity of ignoring party and standing by their imperiled country.

Though the effect of his appeals can never be fully estimated, it is safe to say that they effectually aided in concentrating that power which overthrew the rebellion; they were as potent as those of Demosthenes, in his Phillipics which so effectually aroused "the indignation of his countrymen against Phillip, the common enemy."

In the autumn of 1861, he was nominated for attorney-general by the Union party of New York, under the conviction that the crisis demanded a man of his long experience and varied legal attainments, as the chief prosecuting officer of the State, and as the adviser of its able executive. The nomination was reluctantly accepted, so averse was he to holding any official position. His election was a matter of course, and he entered upon the duties of the office in January, 1867.

While discharging the duties of attorney-general, in addition to an unusual amount of civil business which he was compelled to dispose of, it was his fortune to conduct some very difficult and extraordinary

criminal prosecutions. Prominent among these was the case of the People *v.* Covert—twice tried at the Livingston Oyer and Terminer in 1863.

The singular features of this case required in the counsel for the People, not only great legal learning, but a thorough acquaintance with medical jurisprudence, particularly in the department of toxicology. Covert had been indicted for the murder of his wife, by administering arsenic to her, at different times, and under circumstances which rendered its detection very difficult.

The victim was young and beautiful. It was alleged that the arsenic was administered to her at a period of approaching maternity, and in quantities which produced a lingering and painful illness, some of the symptoms of which were complicated by the peculiar situation of the victim. Immediately after her first attack, her mother and several of her friends took possession of her sick room, and by the aid of skillful physicians she was pronounced out of danger. She was then left to the care of a faithful nurse, with orders to admit no person, not even her husband, into the room. But some time during the ensuing night Covert entered the room and peremptorily dismissed the nurse, alleging that he would watch with his wife the remainder of the night. On the following morning her horrid sickness returned with increased agony. The poor woman lingered eighteen days in the most excruciating misery, and then died.

Her declaration *in articulo mortis* was taken, in which she stated, among other things, that during the night her husband watched with her, he gave her some medicine which did not taste like that which had been left for her by the physician; that at first she refused to take it, but he compelled her to do so, alleging that she would die if she did not. There were other circumstances in the case which pointed to the guilt of the husband. He was arrested and committed to jail.

The stomach of the victim was subjected to a chemical analysis by one of the most eminent chemists in the State ; but no arsenic was detected. This circumstance was relied upon by the counsel for the defense with great confidence. But Mr. Dickinson, who was assisted by John A. Vanderlip, an eminent lawyer of the Livingston bar, relied with equal confidence on the theory of Orfila, Daugen, Flandin, and others, that in cases where solid poisons are administered in small doses, and at long intervals, chemical analysis will fail, provided the victim survives over sixteen days after taking them ; for by that time the poison becomes entirely absorbed and eliminated, particularly arsenic, which rapidly passes from the system by the various secretions. It was proved by eminent physicians who attended the woman, that the whole alimentary canal was so seriously inflamed that it produced death—that this inflammation was caused by arsenic. It was proved by those physicians and by chemists that the elimination and absorption of poisons had taken place during the time which elapsed after taking the arsenic, and had thus passed out of the system, leaving its indubitably fatal results. Having proved this and the other circumstances, Mr. Dickinson contended to the jury that the fatal effect of the arsenic was fully proved, and that it had passed from the system ; and thus there was no necessity of producing it, any more than there would have been in producing the ball, the dagger, the ax, or the bludgeon, had the woman been slain with either of those instruments.

“Supposing,” said Mr. Dickinson, “that this woman had been killed by a pistol ball, which passed through her body, and lodged where it could not have been found ; supposing we had proved by competent evidence, that her death was occasioned by a fatal inflammation produced by the passage of that bullet through her, who would contend that the bullet



must be produced before the man who shot her with it could be convicted."

Mr. Dickinson brought to this prosecution all the learning, ingenuity, and ability, which its singular intricacy demanded. His address to the jury occupied five hours, and has been excelled by few forensic efforts.

Covert made an obstinate and able defense, and the jury, after deliberating nearly two days, failed to agree—standing ten for conviction, and two for a discharge of the prisoner. On a subsequent trial, he was acquitted, having produced some evidence which satisfied the jury in their verdict; but Mr. Dickinson was not present at that trial.

At the expiration of his term as attorney-general, he was appointed by Mr. Lincoln a commissioner to settle the Oregon boundary question with Great Britain. "Your long experience as a statesman, your acknowledged legal ability," said Mr. Lincoln, in announcing to him his appointment, "has prompted me to tender the place to you, with the earnest hope that you will accept it." But it was most respectfully declined, although it was one of the most honorable and lucrative appointments within the control of the president.

Soon after this, Governor Fenton, learning that Judge Henry R. Selden was about to resign the place which he had so ably and acceptably occupied on the bench of the Court of Appeals, tendered the position to Mr. Dickinson, but he thought proper to decline the high and distinguished honor thus offered to him.

"One of the last acts of President Lincoln was to nominate him for the office of district-attorney for the southern district of New York. He accepted this office, and entered upon the discharge of its duties.

"When this appointment was announced, although it was felt that the requirements of the office were not such as to claim the constant exercise of his best legal



abilities, it was universally recognized as a partial acknowledgment of the generous services which he had both the desire and the power to render his country. He commenced the discharge of its duties at a period when it especially demanded experience, learning, and ability. His appointment was, therefore, considered a fortunate circumstance for the government."

This was the last official position Mr. Dickinson ever occupied. In order to discharge its duties, he was compelled most of the time to remain in the city of New York. He was thus obliged to surrender the comforts of his home at Binghamton, which he had spent years in adorning with elegance and refinement, where taste, cultivation, intelligence, and tranquillity furnished a "pure banquet—a feast of the mind."

He continued in the active discharge of his duties until the ninth day of August, 1866. On that day he was engaged in the United States Circuit Court. On its adjournment, in the afternoon, he returned to the residence of his son in law, Hon. Samuel G. Courtney, with whom he resided when in the city. Towards evening he complained of indisposition, which was not regarded as serious. He continued in this condition until Thursday about noon. He had risen from his bed on that morning—dressed and shaved himself—ordered his breakfast, saying that he felt much better; and as Mr. Courtney left the house, he said, in a pleasant, jocular way: "*You may run the office to-day; I shall be down there to-morrow.*" To-morrow! alas, for him it was never to come. Ere its arrival his career on earth was to cease, and he was to pass away from all its scenes,

"To realize in some unclouded sphere  
Those pictured glories feebly imaged here."

Soon after this, his symptoms indicated serious illness; at length they assumed an alarming appear-

ance, and before five o'clock in the afternoon, his medical attendant informed him that he was rapidly approaching the close of life. He received this announcement calmly. No change passed over his face. Taking the hand of Mrs. Dickinson, who stood by his bed-side, he said :

“Let us bear it like Christians ; the separation will not be long. You will be with me again soon, and then we shall never part.”

He then dictated messages of affection to each member of his family—beautiful, tender and touching were these few words—they were indeed “precious heritages” from a departing father, now treasured in their heart of hearts, for no man was ever more fondly loved by his family than he.

In a brief time the end drew near. Raising himself, he said, in a clear, strong voice : “The conflict is strong, but the other side is ours,” and in a few moments he was gone.

The intelligence of his death produced the most profound sorrow in all circles, and among all parties. The various courts then in session in the city promptly adjourned. A very large meeting of the New York city bar was convened, attended by the ablest of its members, and also by some of the most distinguished citizens of the city and State. Eulogies of impressive eloquence were pronounced, and everywhere unusual marks of respect to the memory of the deceased statesman were observed.

At Binghamton, the intelligence of his death was received with every token of grief—not assumed for the occasion, but real, unaffected grief. Bells were tolled, public and private buildings were draped in mourning, and a large community mourned the death of a favorite son, and every one felt his loss as a personal affliction.

The Broome county bar immediately assembled to testify their sorrow at the death of him who, for so many years, had been its distinguished leader, and

whose social worth had rendered him dear to all of them.

At the time of his death, the Legislature of the State was in session. The event was thus announced to both branches of that body :

“NEW YORK SENATE, }  
Saturday, April 14, 1866. }

“The following preamble and resolution were presented by Mr. Folger, seconded by Mr. H. C. Murphy, and unanimously adopted :

“ *Whereas*, The Senate, filled with mournful recollections brought by the return of the day when Abraham Lincoln met his violent death, has received an additional sadness from the sudden decease of the Hon. Daniel S. Dickinson, formerly president of this body, as well as the worthy and able incumbent of many offices of honor and trust under the State and nation,

“ *Resolved*, That, as a proper mark of respect for the memory of the departed, this body do now adjourn.”

Resolutions equally expressive of sympathy and sorrow were, on the same day, unanimously passed in the Assembly and entered on its journal.

Thirty-eight years had passed away since Daniel S. Dickinson came to Albany with Lot Clark, trembling with hope and fear, yet conscious of his high destiny ; standing before a chief justice of the State, asking him for a favor, which, if granted, would permit him, a stranger, poor and unknown, to enter an arena to contend with the giants of those days, for name and fame.

Moved by the strange inherent power of his intellect, the great chief justice listened approvingly to the story of the poor student,—granted a request which he had refused to a renowned lawyer and statesman,—opened to him the doors of the court,—called him to the bar,—and, as he had predicted, saw

him ascend from one honor to another until he entered that august body, the Senate of the United States. Thirty years! ah, how briefly they sped away; and now in that very hall where, clothed in judicial dignity, he sat by the side of that chief justice before whom he was so recently a suppliant—where the pearls of his mind had been cast in rich offerings, in the days of his young ambition—the voice of sorrow and mourning for his death resounded. Well may we all address the throne of the Eternal in the language of him who spake as by inspiration: “So teach us to number our days, that we may apply our hearts unto wisdom.”

Mr. Dickinson possessed a chaste and refined literary taste, strengthened and enlarged by an extensive knowledge of books—a long acquaintance and familiarity with the world. All his literary efforts exhibit the vivacity and strength of his mind, the quickness of his conceptions, and the purity of his taste.

Among the most pleasing and interesting productions of his pen are the letters which he left behind him. They are, throughout, strongly impressed with the character of their author. They are written with great liveliness and force, with a considerable share of wit, perfectly natural and unaffected. It is this last quality which forms one of their principal charms. Some of his most beautiful letters are directed to Mr. Dickinson. In one of them, dated New York, September 8th, 1865, he says:

“Your good, kind letter of the 6th, came yesterday. I deeply sympathize in the labor of love you are performing, in looking over and arranging our early family letters. . . . There is no one better qualified than you to arrange such correspondence. I should scarcely venture upon a task so full of earlier remembrances and replete with tender emotion; and I cheerfully commit it to you, in all the sacredness which belongs to it. . . . I desire that you will be as careful of the letters written by yourself, as



of the letters written by me, for they are the best of the two.”

In another letter to her he says: “I am sorry to learn, by Mary’s letter, received this morning, that you are still sleepless and ill. If you continue so long, I shall go home, regardless of everything else. I am uneasy when absent from you, at best, and when you are not well, my anxiety becomes painful. . . . You know not half my solicitude and affection.”

Two daughters survive Mr. Dickinson—Mrs. Courtney and Mrs. Mygatt. Some of his letters to them are unequalled for their tenderness, elegance, and simplicity.

In a letter to the former, written in 1858, he says: “But, my dear child, I did not fail to read and appreciate your beautiful letter; so beautiful and affectionate, that I longed for a moment to give a corresponding answer, but I could not get it. My life has been literally chequered by lights and shadows, but no one object has ever given me more pleasure than such obedience and devotion as you have uniformly shown from your earliest childhood.”

In his reply to a letter written by Mrs. Courtney to him on his birth-day, September 16th, 1860, he says: “Your letter, written in remembrance of my birth-day, with its sweet tones of affection, was twice welcome, and will be dearly cherished with many kind tokens of a beloved daughter to her father.

“I would that I were a patriarch, that I might confer on you a blessing of health, happiness, and peace; that peace which is unknown to those who flit over life’s ocean in quest of excitement, to slaughter time and indulge sense, but that which elevates the desires, rectifies the heart, and fits us for a glorious fruition hereafter. . . . Age brings me no sadness, no regrets, but consoles me with the reflection that when I have fought the ‘good fight, and have finished my course,’ if I have kept the faith, I shall



live again in the land of flowers and spring—live, clothed with eternal joy and perpetual youth.”

Christmas morning, 1862, he received a beautiful cross from Mrs. Mygatt. In acknowledging the receipt of it, he says :

“*My Dear Mary*—I accept your beautiful present of a cross with affectionate emotion, and return you the warm tribute of a father’s heart. That I may indulge a lively remembrance of the sentiments which prompted a gift so appropriate, and walk in the way which the symbol admonishes, is the prayer of my heart.”

In another letter to Mrs. Mygatt, he says :

“*My Darling Mary*—Your note, so replete with beauty and affection, has just been received. I am proud that you and all my beloved ones are pleased with my Albany speech. It was hurriedly made and carelessly reported, and I am all the more glad that it has elements enough for your admiration left. . . . I am always more solicitous of what those nearest and dearest to me think of my efforts, than I am of what the world will say or think.”

On one of her birth-days he writes as follows :

“The light you brought to our household in your natal day, has never been quenched, but has grown brighter as time has advanced and new relations have multiplied. I have only time to send you this one word of affection, and to hope that your dear boy may be as pure in paternal regard and love as you have been.”

The following, from a letter to Miss Nellie Mygatt, informs the reader of Mr. Dickinson’s love of domestic life. He says :

“I love the social and domestic circle more than ‘the applause of listening senates to command ;’ the affection of cherished ones more than the ambition of the Cæsars ; the sacred cares of home, and the holy duties of religion, more than the *eclat* of the popular voice or the notes of the trump of fame.”

The foregoing extracts are taken from the published volumes of Mr. Dickinson's speeches and letters, compiled by John E. Dickinson, Esq., who also wrote a very creditable sketch of the statesman's life.

In those volumes there are several pages devoted to the poetry of Mr. Dickinson, which was arranged and prepared by his daughter, Mrs. Mary S. D. Mygatt. In the preface to these poems, she says :

“To those who have known him only in the bustle and turmoil of public life, or perhaps through the press's medium, these heart thoughts may present some idea of the *inner* being, of the sentiment which graced his refined mind, that rendered the home he blessed with his presence so bright and cheerful, and of that devoted love which ever made his foremost thoughts and desires the happiness of those about him—endearing traits which the countless cares of an eventful life could never change or take away.”

Among these poems the following has been much admired, and possesses the interest of having been written but five days before his death, “as it would seem with some premonitions of his approaching end. It reveals the tenderness and purity of his inner life more than any speech that can be made.”

TO LYDIA.

In youth's bright morn, when life was new,  
 And earth was fresh with dew and flowers,  
 And love was warm and friendship true,  
 And hope and happiness were ours,

We started hand in hand to thread  
 The chequered, changeful path of life,  
 And with each other, trusting, tread  
 The battle-fields of worldly strife.

We ranged in walks obscure, unseen,  
 O'er rugged steep, through vale and glen,  
 And climbed along the hillside green,  
 Unmindful of the future then.

We caught the song of earliest birds,  
We culled the loveliest flowers of spring;  
We plighted love in whispering words,  
And time sped by on fairy wings.

And as it passed new joys were found  
And life was gladdened by the birth  
Of prattling babes, who clustered round  
To cheer with smiles our humble hearth.

Fate thrust us forth before the world,  
And phantoms whispered earthly fame,  
Where hope's proud banner is unfurled,  
And happiness too oft a name.

Thus lured along, we rode the dark  
And foaming tide of public life,  
And proudly dared, with slender barque,  
The elements of storm and strife.

But storm and strife, thank heaven, have passed—  
The night has fled, and morning come!  
And we, tossed mariners, at last  
Returned once more to hearth and home.

But of the loved ones God had given,  
Two have returned—two sunk to rest,  
In life's gay morning called to heaven,  
To the bright mansions of the blest.

They sleep amid Spring Forest's glades,  
Where flows its streamlet's murmuring waves,  
And oft at evening's gentle shades  
We'll weep beside their early graves.

Yet loved ones cluster round us still,  
To gild the days of life's decline,  
And whisper—'tis our Father's will  
That blessings yet are yours and mine.

No change of life, no change of scene,  
No fevered dreams, no cankering cares,  
No hopes which are, or e'er have been,  
Nor wrinkled brow nor silver hairs,

Have ever changed that vow of youth,  
Or blotted it from memory's page ;  
But, warm as love and pure as truth,  
It ripens with the frosts of age.

A few more days, a few more years  
Of life's capricious, fitful tide ;  
A few more sorrows, joys and tears,  
And we shall slumber side by side.

Then let us live—then let us love—  
As when life's journey we began,  
Until we meet in worlds above,  
When this sad pilgrimage is done.

These beautiful lines were read by Judge Pierrepont, at the meeting of the New York city bar, called at the time of Mr. Dickinson's death to pay a tribute of respect to his memory.

## ALVAH WORDEN.

Commences Life as a Merchant.—His Character, Acquirements, and Industry.—Demagogues.—Mr. Worden's Opinion of Them.—His Parentage and Birth.—Prepares for College.—His Love for the Natural Sciences.—Decides not to Enter College.—Commences the Study of Medicine.—Abandons that Study and turns his attention to Mercantile Pursuits. Makes the Acquaintance of a Prominent Merchant of Auburn, New York.—Worden Enters his Store.—Pleases his Employer.—Accepts ■ Position in the Auburn Bank.—Commences Business as a Merchant on his own Account.—For ■ Time, Meets with Great Success.—His Marriage to a daughter of the late Judge Miller.—Worden's Failure.—Commences the Study of Law.—Elected a Justice of the Peace.—Admitted to Practice.—His Success.—Engages in the Trial of a Cause against Mark H. Sibley.—Succeeds.—Forms a Partnership with Mr. Sibley and removes to Canandaigua.—His Professional Progress.—Worden is Engaged in the Celebrated Case of Griffith *v.* Reed.—Is Defeated by the Referees.—Appeals to the Supreme Court.—Worden Attends that Court, prepared to argue it himself against Marcus T. Reynolds.—Worden Loses his Trunk.—Appears in the Court Room, at Utica, in his Common Clothing.—His Appearance.—Remarks of Foppish young Lawyers.—The Argument.—Interesting Scene.—Apparent Triumph of Reynolds.—Defeat Turned into Victory.—Success of Worden's Argument.—Its Effect.—Other Important Cases in which he was Engaged.—Worden and the General Term Lawyers of the Old Supreme Court.—He is Elected to the Legislature.—His Legislative Career.—His Efforts for the Passage of a Law Providing for ■ Constitutional Convention.—Law Passed.—The Convention.—Mr. Worden a Delegate.—Candidate for President.—Is Strongly Sustained.—John Tracy Chosen.—Mr. Worden's Labors and Activity in the Convention.—His Great Speech on the Powers of the Executive.—Other Speeches.—His Plan for a Judiciary.—Closing Scenes of the Convention.—Resolution offered that Members Sign the Constitution.—Opposed by Charles O'Connor.—Sustained by Worden and others.—Adjournment of the Convention.—R. H. Walworth, J. A. Collier and Mr. Worden, Appointed Codifying Commissioners.—Walworth and Collier Resign.—Worden's Labors and Duties.—Reappointed ■ Code Commissioner.—Returns again to the Duties of his Profession.—Great Case of The Farmers' Loan & Trust Company *v.* Carrol.—Great Argument of, before the Supreme Court.—Worden, J. C. Spencer, Kirkland, Wm. C. Noyes and Hiram Denio engaged.—Interesting Scene in the Court Room.—Description of the Arguments.—Reflections on the Professional and Political Life of Alvah Worden.

Alvah Worden first entered the theater of life, on his own responsibility, in the character of a merchant. In this vocation, at a very early age, he developed



that correct and ready knowledge of human nature, that thorough understanding of business in principle and in detail, that sound practical sense, which gave him much prominence as a man of business.

His fine mind, his many intellectual endowments, at length, by an easy transition, led him to the legal profession. With an industry which no excess of toil could weary, he applied himself to the study of law as a science, a system for the well being of society, as regards the enjoyment of civil rights, the prevention of crime, and the encouragement of virtue. He sought its fundamental principles as well as the detail of each precedent and legislative rule, reducing them to the test of reason alone; and when he came to his examination, he possessed, *in extenso*, the qualities and acquirements of a thorough lawyer.

Acute, sagacious, reflecting, with a plain, masculine, commanding eloquence, which ignored superfluous decoration and fancy, alike powerful in reason, attractive in ethical beauty and logical skill, he soon gained a commanding position at the bar of his native State, and took a high rank among the distinguished civilians of his day.

Among his faults, there was a certain firmness which sometimes degenerated into obstinacy,—a confidence in the principles he advocated, which was often blended with contempt for those who differed with him. His unbending honesty and straightforward integrity, in his intercourse with men, especially in politics, often led him to neglect that spirit of conciliation, which in a government like ours, conducted by the stratagem of party, is necessary in the attainment of important and responsible positions. It was a distinguishing feature in his character, that he would neither yield his judgment to the clamor of the populace, nor suffer himself to be swerved from the line of what he deemed to be his duty, by the artifices of demagogues; and hence, Mr. Worden was not an accomplished politician, simply because he did not

desire to be one. He regarded politics, in the detail, as a kind of machine, whose motive power is petty ambition, lubricated by intrigue, deceit and mendacity, which, by a strange metamorphose, often changes pigmies into giants, who, in the language of Bacon, "have not their thoughts established by learning, in the love and apprehension of duty, nor ever look abroad into universality, do refer all things to themselves, and thrust themselves into the center of the world, as if all time should meet in them and their fortunes, never caring, in all tempest, what becomes of the ship of State, so that they may save themselves in the boat of their own fortunes."

Alvah Worden was born at Milton, in the county of Saratoga, June 11, 1798. At the age of fourteen he entered Milton Academy, then a very flourishing institution for young men, where he prepared to enter the junior class of Union College. But instead of going to college, he decided to follow the medical profession, and commenced his studies with the late Doctor John Bennett, of Ballston Spa, one of the most eminent and honored physicians in the State.

During his studentship at Milton, his mind was attracted to the study of natural science, especially of chemistry, and he made considerable progress in agricultural chemistry, which then began to be studied in the State. Some of his letters on this subject, written to the late Jesse Buell, in 1838, exhibit much research and reflection.

After pursuing his studies with Doctor Bennett for some time, he became satisfied that the life of a practicing physician would not be agreeable to him, and he abandoned the study of medicine, with a view of turning his attention to mercantile pursuits. While at Ballston, he made the acquaintance of the late George Leitch, of Auburn, then one of the great merchants of western New York. Pleased with the appearance of young Worden, he invited him to enter his store as a clerk, promising to advance his interest

as fast as would be practicable. The invitation was accepted, and Worden soon assumed the entire charge of Mr. Leitch's extensive business. He continued with him until the old Bank of Auburn was established, when he was solicited to accept the position of teller in that institution. Yielding to the request of the directory, he entered upon the discharge of his new duties with those business qualifications which soon rendered him invaluable to the bank, and gained him many friends with the public. After discharging the duties of teller two years, he decided to commence the mercantile business on his own account. Accordingly, he left the bank, much to the regret of the directory, who offered additional inducements for him to remain, opened an extensive store, and soon became the leading merchant, and an eminent citizen of Auburn. In all matters connected with the prosperity and advancement of that village, he exhibited those strong mental traits which afterwards distinguished him at the bar.

So extensive and prosperous was his business, that he sought other avenues in which to invest his gains. He purchased a cotton factory which had been established by a company at Auburn, and introduced into the prison at that place, the business of weaving cotton, which for a time became almost the sole employment of the convicts.

In the year 1824, he married a daughter of the late Elijah Miller, of Auburn, a lady of many personal attractions and accomplishments, who is still living. Mrs. William H. Seward was her sister.

After continuing in business several years with great success, a revulsion in the commercial world occurred, which caused a decline in cotton. This led to the unavoidable failure of Mr. Worden. His partner availed himself of the insolvent laws, which Worden declined to do; on the contrary, he surrendered to his creditors all of his property, including his furniture and silver plate; determined to do all that he could

towards paying his indebtedness. Having thus been repulsed in his first movement in the battle of life, he undauntedly surveyed the field and made ready for another onset. In deciding upon a future occupation, he chose the legal profession, and without a dollar in the world, and heavily in debt, he commenced preparing for it.

Amid the cares of his business career, he found time to study the contents of a library which he had collected with the judgment and taste of a scholar; his mind was enlarged by experience, disciplined by a thorough education, and ripened by contact with the world. Although he was then thirty-four years of age, he was in every way qualified to commence the study of a profession congenial to his taste, and to which he seemed to be directed by destiny.

Soon after commencing his studies he was elected a justice of the peace at Auburn. The income from this office, with some agencies which he obtained, enabled him to support his family while pursuing his studies. It is said that the manner in which he discharged his official duties disclosed his unusual abilities and attracted the attention of the members of the bar who appeared before him in the trial of causes.

After a thorough preparatory course, he was admitted to the bar and commenced his practice at Aurora, Cayuga county.

At this time, there was a large amount of litigation resulting from the financial difficulties of the country, and the demand for legal talent was never greater.

For a time, Mr. Worden's business was confined to Justices' Courts and to the Court of Common Pleas of Cayuga county; but the decided ability which he exhibited in the trial of causes in these courts drew the attention of the public to him, and he soon found himself engaged in a very respectable practice in the Supreme Court, with the reputation of a safe and successful lawyer. His business continued to increase, so



that he began to attend the circuits of the adjoining counties.

At length he was engaged in an important suit which was tried at the Ontario Circuit, where he was opposed by the late Mark H. Sibley, then one of the distinguished lawyers of western New York.

The case was contested inch by inch, with rare skill and great determination, resulting in a verdict for Mr. Worden.

Soon after this trial, Mr. Sibley invited Mr. Worden to enter into partnership with him; after mature deliberation the invitation was accepted, and in the year 1835, Alvah Worden became a resident of Canandaigua, and a partner of Mark H. Sibley.

It is not invidious to say that the firm of Worden & Sibley combined as much forensic power as any which at that time existed in the State. Canandaigua was then the home of John C. Spencer, Dudley Marvin, Sibley, Wilson, and others, whose names have shed a luster on their profession.

Surrounded by such men, Mr. Worden rapidly rose to eminence, and soon began to appear in the circuits at Rochester, Auburn, Penn Yan, Bath, and other counties. He did not, however, appear at the bar of the General Term until he had been at Canandaigua a year and a half; after that time he was occasionally engaged in that court. But it was not until his argument in the celebrated case of Griffith v. Reed, that he attained any eminence as a General Term lawyer. His effort in that case gave him a position among the most prominent members of his profession in the State.

It was a case which involved several hundred thousand dollars, and the fortune of many well known business men in western New York. It had been tried before Addison Gardner, Vincent Mathews, and Orlando Hastings, as referees, who had been appointed to hear and determine the same. Their report being against Mr. Worden's client, the cause was appealed



to the Supreme Court. In due time it was noticed for argument at Utica, where a term of the old Supreme Court was held once in a year. With case and brief he attended, prepared for the contest.

In those days, the judges and lawyers attending the term at Utica, stopped at Bagg's hotel, but as Mr. Worden's trunk which contained his best apparel had been miscarried, and he was dressed in a common traveling suit, he did not deem himself sufficiently well attired to appear at a fashionable hotel filled with the most eminent men in the State. Accordingly he sought a more obscure stopping place, to await the arrival of his trunk. His case was one of the earliest on the calendar, and he was compelled to proceed to the court room before the arrival of his trunk, "accoutered as he was." Fortunately, his papers were in a package which he carried with him.

He was then a stranger to nearly all the lawyers present, and taking a retired seat in the court room, he awaited the call of his case. At length it was reached; with great modesty, but not without self-possession, he came forward and opened the argument.

Many were the half sneering glances which several foppish young lawyers within the bar cast upon the plainly dressed, ordinary looking lawyer who stood before the court. They were surprised at his temerity in appearing against one of the most distinguished lawyers in the State.

"I wonder who that fellow is?" asked one of the young attorneys of a companion.

"Oh, he is some ambitious village lawyer who is desirous of being heard before the General Term, and having his name appear in the reports; but I rather think he don't know who he has got to deal with, or he would have restrained his vaunting ambition, which he'll find has o'erleaped itself in this instance," was the reply.

In a short time however, the young men learned

that the man before them commanded the attention of the judges and the bar, and that the great lawyer opposed to him was not, after all, so much his superior. He proceeded with great caution, cited his authorities with care, and commented upon them from written points, with a plain but effective oratory. As he had the closing argument, his speech was brief.

Marcus T. Reynolds appeared against him, replying with that vigor and intellectual force for which he was so distinguished. Extensive legal reading and long attendance upon the highest courts in the State had rendered him familiar with almost every reported case, and the circumstances under which it arose. He never appeared to greater advantage than on this occasion. His apparent superiority over his opponents was noticed by the bar, and it was felt by the court; but unfortunately for him, in closing his argument, he took occasion to allude to what he said the effect would be on commercial transactions, should the court be against him, but he left the case in apparent triumph.

When Mr. Worden arose to conclude the argument, there were many in the court room who regretted to see one so humble attempt to answer an argument of such power and eloquence; to them, he seemed like one about to immolate himself in a vain attempt to save his clients. But he entered on his remarks with the calm confidence of one who could rely upon himself in any emergency; he had not proceeded far, before he began to strike out bright, strong, original thoughts, and to bring up arguments from depths which his opponent had not attempted to sound. When replying to the authorities referred to by Mr. Reynolds, he did so with great skill and with the nicest discrimination, ingeniously and with precise logic detaching the points which diverged from the case at bar. But when he alluded to the effect of the decision to be made on the commer-

cial relations of the country, his superiority was manifest, and he arose to a point in the case which Mr. Reynolds had not reached. The bar waked up as from an apparent slumber. Greene C. Bronson, then one of the judges, leaned forward in his chair, made a few notes, and said :

“Mr. Worden, will you please repeat what you have just stated? I am not quite confident I fully understand you.”

The scene was changed, the battle fought, the victory won—and completely won.

During this argument, there was seated within the bar, a friend of Mr. Worden—one who through all the phases of his life had admired and honored him, never doubting his ultimate success at the bar. With many fears for his friend, he listened to the splendid argument of Mr. Reynolds,—he felt its power—saw its effect on the court and bar—knew the gigantic effort which must be made to overcome it, and with breathless anxiety awaited the result. As Mr. Worden arose in strength—as he gradually gained the eminence on which his opponent stood, and then soared above him, reaching the point of triumph, tears of joy trickled down his cheeks, and his bosom heaved with those unutterable emotions which none but those generous and noble minds can feel, whose deep-toned sensibility teaches them *how* to be a friend. Mr. Worden was fully sustained by the court, and from that time to the close of his life, the judiciary of the State, as well as his brethren of the bar, regarded him as one of its gifted lawyers.

It is, perhaps, proper to add, in the language of another, that “Efforts have been made, but without success, to obtain a reversal of the opinion of Judge Bronson; once in the Court for the Correction of Errors, in the case of *Sudam v. Westfäll*, 2 *Denio*, 205. Judge Gardiner at that time was the presiding officer of the court, and brought his great influence to bear on the question, to sustain the decision which he

had made as referee in the case of *Griffith v. Reed*, honestly believing that his was founded on established precedent; but the decision of the Supreme Court in the case of *Sudam v. Westfall* was only reversed by distinguishing it from *Griffith v. Reed*. The same question was again presented for adjudication in the Court of Appeals, in the case of *Wright v. Garlinghouse*, 26 *N. Y.*, 539; the judgment of the Supreme Court in the second district reversed, and the doctrine settled in the case of *Griffith v. Reed* maintained and declared to be the law of the State."

Those, however, who heard Mr. Worden's argument in the case of *De Bow v. The People*, 1 *Denio*, 9, assert that it was the ablest argument of his life. It evidently produced an impression on the court, for it went with him, and the opinion of Mr. Justice Bronson is well worth reading, though it was overruled by the Court for the Correction of Errors in the case of *Gifford v. Livingston*, and in *Warren v. Beers*, but by a divided court, in which strong and powerful opinions for sustaining it were given by several of its ablest members.

No questions have been more seriously litigated in this State, than those reported in 1 *Denio*, 9; 21 *Wend.*, 502; and the examination of the opinions delivered in these cases, and in that of the 26 *N. Y.*, 539, would repay the legal student for his trouble.

Another case might with propriety be cited, illustrative of Mr. Worden's power of argument, which took place before Chancellor Walworth. During this argument, a gentleman of the bar remarked that there appeared to be no decision applicable to Mr. Worden's case, to which a distinguished lawyer replied:

"Perhaps not, but there will be soon, for such an argument will not fail to produce its effect upon the chancellor."

This remark was subsequently verified, for the chancellor decided the case in his favor.

A reference to all the important cases argued by



Mr. Worden at the bar of the Supreme Court, Court of Errors, and of Appeals, would alone fill a volume.

While he was at the bar, the business of those courts was centralized and controlled by eminent "Term lawyers," who resided principally at Albany and New York. The ascendancy which Rufus W. Peckham, Nicholas Hill, Marcus T. Reynolds, Charles O'Connor, William Curtis Noyes, Daniel Lord, David Dudley Field, F. B. Cutting, J. W. Gerard, Samuel Stevens, and a few others, attained at the bar of these courts has passed into history. There were but few members of the country bar who presumed to enter the lists against these Jupiters of the profession. The immense number of heavy packages which they were constantly receiving from the country, marked "Papers for the General Term," "Papers for the Court of Errors," &c., &c., exhibited the tribute which lawyers from all parts of the State paid them.

That Alvah Worden, on his first entrance into the profession, with no influence to sustain him—relying upon his own strength, boldly and successfully grappled with these great lawyers, is evidence enough of his superiority.

He had but little political ambition; but from his position at the bar and his habits of public speaking, it was impossible for him to resist those allurements which politics have for lawyers. He identified himself with the Whig party at its formation, but his time was so entirely occupied with the duties of his profession, that for several years he avoided all offers of official distinction.

In the fall of 1840, however, he accepted the nomination for Assembly from the Whigs of Ontario county, and was elected by a very large majority. At this time, Mark H. Sibley was one of the representatives of the seventh Senatorial district, having been elected in the autumn of 1840. He, however, resigned his seat on the twenty-third day of May, 1841, a few days before the adjournment of the Legis-



lature. His business relations with Mr. Worden had terminated previously to this.

The latter, on taking his seat in the Legislature, was honored by the second position on the Committee of Ways and Means. During this session he made few speeches, but they were on important questions, and in support of certain bills which he had reported. Through his influence, several important laws were enacted, which pertained to the improvement of the legal and judicial system of the State. When the Legislature adjourned, he declared to a friend that he would never accept a seat in that body again. Returning home, he entirely discarded politics, until the autumn of 1844, when, at the earnest solicitation of his party, he again consented to represent them in the Legislature.

The session of 1845 was important and memorable. In it Mr. Worden occupied a very high and influential position. Although the Whigs were in the minority in both branches of the Legislature, their party having been prostrated in the State and Nation by the defeat of Mr. Clay, such was the masterly management of John Young, Mr. Worden, and others, that defeat was turned into victory and a way opened for the resuscitation of an apparently lifeless party.

Horatio Seymour was speaker of the Assembly, and the leader of the Democratic party in the State. The great question before the convention was the amendment of the Constitution. The Democracy in the State was then divided; the great schism which eventually prostrated it, was then just developing itself. This was adroitly seized upon by the Whig leaders and turned to their permanent advantage.

No measure before the people was more popular than the proposed convention; and some of the Democratic leaders assumed a position towards it that savored so much of hostility, that it greatly impaired the strength of their party.

As has been said in another part of this work, the debate which took place in the Assembly on this question, attracted attention from all parts of the State. Mr. Young advocated the proposed convention with great ability; he was ably sustained by Mr. Worden and others. To the energy, talents, and unwearied labors of these persons, the Whig party was indebted for its subsequent victory, and the State for whatever advantages have flowed from the Constitution which was subsequently adopted.

The convention bill finally passed both branches of the Legislature and became a law.

The measure before this Legislature which was next in importance to the convention bill, was that of internal improvements. This question was at that period one of vast importance—one that called into requisition all the energy and ability of statesmen and legislators. It was seized upon by politicians, entered into partizan strife, and of course became divested of interest to all except those engaged in the scramble for office. The measures over which so many contests occurred, so many elections were lost and won, have long since been settled, and we survey them now with much the same interest with which travelers regard historic ground and battle-fields of other days.

In the debates which occurred on the internal improvements question, Mr. Worden exhibited the abilities of a statesman. Though he was accused of errors, and perhaps in many cases justly, yet like all prominent partizans, his political character will be varied by the lights and shades which political friends and enemies throw upon it; like all political leaders, he had frailties and virtues.

In the fall of 1845, he was again elected to the Assembly. The session to which he was elected commenced January 3rd, 1846. It was not an important one, though many measures affecting the public interest were adopted. Mr. Worden occupied a responsi-

ble position, and was regarded as a leader of his party in the State.

The act providing for a convention having become a law, a general election for choice of delegates to it, took place in May, 1846, each county sending delegates to correspond with its representation in the Assembly.

The election resulted in the choice of some of the most distinguished and able men in the State, a large proportion of whom were lawyers.

Alvah Worden and Robert C. Nicholson were elected delegates from Ontario county. Among the many eminent men who occupied seats in that convention, few were more thoroughly qualified for their position than Mr. Worden. He had been one of the most effective members of the Legislature which passed the bill providing for it; his influence and exertions aiding materially in its passage.

The convention assembled at the capitol in the city of Albany, on the first day of June, 1846. It was organized by the election of John Tracy, of Chenango, as president.

The friends of Mr. Worden insisted upon presenting his name as a candidate for speaker. The vote which he received, declared the high esteem in which he was held by the delegates assembled. He received the largest number of votes cast for any one candidate, except for Mr. Tracy. From the opening of the convention until its final adjournment, a period of over three months, he labored industriously and unceasingly.

On the 13th of June, he introduced a resolution on the naturalization of citizens, supporting it in a speech of great power and force. At the conclusion of his remarks, it was, on motion of Mr. Chatfield, unanimously adopted, and became one of the provisions of the new Constitution.

On the 30th of June, in Committee of the Whole, Mr. Worden delivered his great speech on the powers

and duties of the executive. This question involved the limitation of the powers of the governor, the qualifications which rendered a person eligible for that high office, and the term for which he should be elected. It elicited a debate of much more than ordinary interest; the galleries, lobby, and every accessible place in the Assembly chamber were occupied by a crowd of interested and attentive listeners. The ablest members of the convention participated in it, among whom were Charles O'Connor, Ira Harris, Richard P. Marvin, John K. Porter and Alvah Worden.

It has been said that this debate exceeded in ability and eloquence any discussion which, previous to that time, had ever taken place in that chamber. It raised those who participated in it above the limits of local reputation, and entitled them to the rank of statesmen. Mr. Worden closed the debate; he made no effort at display; the State, its institutions, its policy, interests, and destiny, as connected with its executive, were the topics which claimed his attention, and he confined himself to those, with an intensity of thought, an earnestness of purpose, and a cogency of reasoning, which exhibited the statesman, patriot, and orator.

The same question occupied the attention of the convention on several occasions. On the 31st of July, it was again before the committee. The debate which took place on that occasion was closed by John K. Porter, who delivered a brilliant and effective speech.

This debate created considerable acrimony among those who participated in it, particularly between Mr. Worden and Mr. Porter; but the matter ended in a most amicable manner, it being one of those storms which often pass harmlessly over a deliberative body.

The attention of Mr. Worden was engrossed for a long time, in preparing a plan for a judiciary, and on the 6th of August, he submitted a report to the convention, which was marked for its clearness, expansiveness, and ability. It subsequently received the approbation of many of the leading members of the con-



vention ; for a time it was believed that it would be adopted entire, and recommended to the people. After a long discussion, however, the judicial system which was in force until within a recent period, was adopted.

Mr. Worden justly regarded the judiciary question as one of most vital importance, and his labors upon it were unceasing. There was not a section, not even a sentence in the bill reported, which he did not examine with the closest scrutiny. His experience at the bar, his general acquaintance with the people and their relation to courts of justice, eminently qualified him for the place he occupied on the Judiciary Committee, which, owing to the ill health of the chairman, greatly increased Mr. Worden's labors.

Though the plan for a judiciary which was finally adopted was not in all respects what he desired, yet, as it was the best which, under the circumstances, could be obtained, he gave it his assent. Finally, the convention having completed its labors, Mr. Jones, on the 9th day of October, sent up to the chair the following resolution :

“ *Resolved*, That the engrossed constitution be now signed by the members of the convention, as an attestation of their approval thereof, and that those members not now in attendance be at liberty to sign it at any time previous to the third day of November next.”

Charles O'Connor immediately arose and protested against the resolution, and against the Constitution, particularly the judicial department, and that eminent jurist proceeded to give his reasons for his opposition in a brief but able speech, and his remarks found a ready response in the heart of the ablest and most experienced lawyers then at the bar.

He was followed by Mr. Van Schoonhoven, who, although unqualifiedly against the judiciary article in the convention, approved of the instrument as a whole, and therefore declared he should vote for it.



Mr. Worden addressed the convention. In the course of his remarks, he said :

“ Mr. Chairman—I regard this Constitution, as a whole, as an improvement in the science of government, throwing, as it does, upon the people the responsible duty of keeping their own government under their own control, and of preserving and perpetuating their own rights and liberties. There are provisions in it that I should prefer to have changed ; but the principle to which I have alluded is what I desire to see carried out. I am, therefore, willing to leave this great experiment of a republican government in the hands of the people with the least possible trammels upon their free action ; and this is the true intendment and design of this instrument that we are now called upon to sign ere we part. Having framed it after much labor, in a spirit of compromise and concession, I trust, sir, we shall submit it to the people without attempting to influence their action for or against it, by pointing to this or that provision as objectionable, but that the whole instrument be left to their calm, deliberate judgment, for this judgment is the rock, the sure foundation of our republic.”

After remarks from several other members, the amended Constitution was agreed to by a vote of one hundred and four ayes, against six noes—eighteen members being absent—and the convention adjourned *sine die*.

It was the desire of Mr. Worden, on retiring from the labors of the convention, to resume the practice of his profession, but another field of arduous labor was soon to be opened for him. By the provisions of the amended Constitution, the Legislature was empowered to provide for the appointment of three persons to be styled “ Commissioners of the Code.”

Accordingly, on the 8th of April, 1847, the Legislature passed an act appointing Reuben H. Walworth, Alvah Worden, and John A. Collier, such commissioners. Arphaxed Loomis, Nicholas Hill,

Jr., and David Graham, were, in the same act, appointed Commissioners on Practice and Pleading, whose duty it was, according to the provisions of the act, "to provide for the abolition of the present forms of actions and pleadings at common law, and for a uniform course of proceedings whether of legal or equitable cognizance."

Chancellor Walworth and Mr. Collier having declined to act on the Code Commission, Anthony L. Robertson, of New York, and Seth C. Hawley, then of Buffalo, were appointed in their places.

Mr. Worden accepted the position with great reluctance, but he entered upon the discharge of his duties with perseverance and diligence. His labors and embarrassments were enhanced by the frequent changes in the commission. But he continued to labor with all the determination of his nature, until his term of office expired.

By an act of the Legislature, passed April 10th, 1849, a new commission, consisting of John C. Spencer, Alvah Worden, and Seth C. Hawley, was created.

Mr. Spencer declined to act, leaving the labors of the commission to Mr. Worden and Mr. Hawley, who discharged their duties in a highly acceptable manner. At the expiration of this commission, Mr. Worden returned to the active duties of his profession, where he could test in a practical manner the workings of that legal machinery which he had aided in creating.

During his official career, his large legal business had been conducted mainly by H. O. Cheesebro, Esq., his son-in-law and law partner, an eminent and able lawyer, a gentleman possessing many estimable qualities, and a leading lawyer of the Ontario bar.

Mr. Worden retired from his duties as a commissioner of the Code, to enter upon one of the most extensive fields of legal labor in western New York,

where he continued actively and energetically occupied until his death, which occurred in 1856.

Among the heavy cases in which he was engaged immediately after returning to his practice, was that of *The Farmers' Loan and Trust Company v. Carroll*. This was one of the most important cases ever adjudicated in the new Supreme Court; it involved a large amount of property, and many intricate and interesting legal questions.

The defendant had executed a mortgage to the plaintiff which was a lien upon several hundred acres of the most fertile lands in Livingston county, as the security for the repayment of a very large sum of money.

It was alleged that there were certain usurious matters which entered into the loan, and made a part of the contract. This allegation formed the defense to the action brought by the plaintiff to foreclose the mortgage. In the course of the legal contest which followed, the case reached the general term of the Supreme Court for the seventh judicial district, where, in October, 1851, it was argued at the court house in Rochester.

Alvah Worden and John C. Spencer appeared for the defendant Carrol, and C. P. Kirkland, Esq., appeared for the other defendants in the action; William Curtis Noyes and Hiram Denio conducted the argument for the plaintiff. The importance of the case is sufficiently attested by the number and eminence of the counsel engaged.

The argument occupied two days, and attracted to the court room a large and interested audience. It was a scene seldom witnessed in the history of modern litigation. The vast importance of the case, and the intricacy of the question involved in it, drew out all the intellectual powers of the great lawyers who appeared there as contestants.

John C. Spencer contended that the mortgage was illegal within the restraining act. To the consideration of the question involved in this proposition, he brought

all the great powers of a mind disciplined and enlarged by years of experience. He was suffering at the time from a temporary illness which compelled him to stand while addressing the court, supported by a chair, and in the course of his argument he broke down two chairs. As the last one gave way, he facetiously remarked, that if his legal positions were as unsafe as his personal ones had thus far proved, his learned opponents could already congratulate themselves upon success.

Mr. Worden confined himself exclusively to the question of usury. He was at the time in perfect health, and his mind was never more vigorous and active. The question which he argued was peculiarly adapted to the organization of his mind ; he was at home amid all its intricacies ; he threaded its labyrinths with an ease and precision which exhibited his familiarity with them, and also his extraordinary reach of thought.

The argument of Mr. Kirkland fully sustained his relation to the case, proving him competent to assist his eminent associates.

The efforts of Mr. Noyes and Mr. Denio were admitted to be consummate legal arguments, both in regard to the skill with which they were conducted, the soundness of the principles laid down, and the happy application of precedent to the case before them.

On the whole, the Supreme Court on this occasion presented a scene of forensic interest, replete with profound argument and intellectual elaboration, which will compare with those enacted in Westminster Hall in the days of Burke's and Sheridan's unparalleled success at the English bar.

The opinion in the case was written by the late Judge Wells, and it sustained the view presented by the defendants.

An examination into the professional life of Alvah Worden, is, in many respects, useful as an example to

future lawyers ; while it exalts the character of the bar, it exhibits the result of energy, determination, and self-reliance, when applied to professional duties, and directed to the task of overcoming misfortune and rising above disappointment.

He was not a great politician, though in that sphere he was able. There was nothing of the demagogue about him, though he was skilled in the knowledge of the human heart and adroit in the management of popular prejudices and feelings. These qualities, added to a sound, discriminating mind, and to many other intellectual acquirements, always gave him weight and influence at the bar, in politics, as a codifier and law maker.



## EBENEZER GRIFFIN.

Called to the Bar when the Principles of Statute and Common Law were being settled by Kent, Spencer, and others.—Born at Cherry Valley.—Removes with his Father to Clinton, New York.—Enters Union College.—Reputation as a Student.—Leaves College before Graduating and Commences the Study of Law.—Admitted to Practice.—James Kent.—Commences Practice at Clinton.—Removes to Utica.—His Marriage.—Continues at Utica until 1825, when he removes to the City of New York.—His Reputation as a Lawyer.—His Practice.—Like Elisha Williams, he seemed to be Ubiquitous.—Counsel for the Defense in the Case of the Three Thayers.—In the *People v. Bishop*.—In the Great Case of the Bank of Utica *v. Wager*.—Description of the Argument of that Case.—Joshua A. Spencer.—H. R. Storrs.—The Result.—The Diseased Mind.—Description of the Murder of Morgan.—Mr. Griffin Engages in the Trials Resulting from his Abduction.—He Removes from New York to Rochester.—His Business Relations at Rochester.—Elected Recorder of the City.—Is Counsel in the Celebrated Case of *Clark v. The City of Rochester*.—Opinion of Mr. Justice Allen.—The Appeal from his Decision.—Griffin's Argument on the Appeal in the Supreme Court.—Selah Matthews.—His Character.—His Reply to Mr. Griffin, in the Case of *Clark v. The City of Rochester*.—Dissenting Opinion of Mr. Justice T. A. Johnson, on the *Maxim Stare decisis*.—Opinions of Judges E. D. Smith and T. R. Strong.—Mr. Griffin is Sustained by the Court.—Mr. Griffin's Relations with Governor Tompkins.—His Character as a Lawyer.—His Love of Literature.—His Favorite Authors.—His Death.

AMONG the many distinguished and gifted lawyers whose lives have elevated and adorned the bar of the State, no one is entitled to more respect and consideration, no one will be longer or more fondly remembered, than Ebenezer Griffin.

He was called to the bar at that period in the history of the nation, when the great leading principles of common and statute law were being settled—when the fabric of our jurisprudence was being framed, and its enduring corner stones laid by Kent, Spencer, Savage, Woodworth, Thompson, and their compeers.

He possessed a mental organization which qualified

him for a successful contest in an arena presided over by such master minds. Not only were the circumstances of his early training favorable to the development of his mental powers, but the theater in which he was called upon to act was eminently propitious for their exercise. Very soon after entering the profession, he took a high and responsible position as a lawyer. The native strength and power of his mind, his great legal attainments, his high-toned sense of honor and justice, the dignified fealty which attached him to his profession, rendered his influence strong and commanding in the great work of establishing the legal system of our State.

He was born at Cherry Valley, New York, July 29, 1789. While quite young his father removed to Clinton, Oneida county, New York. There Ebenezer was brought up and prepared for college. He entered Union College, and soon gained the reputation of a close, thorough, and intellectual student, which commended him strongly to the faculty, and to his fellow students. Desiring, however, to enter his chosen profession with as little delay as possible, he left college two years and a half after entering, and immediately commenced his legal studies with Mr. Hotchkiss, a counselor at law, then practicing at Clinton. In due time he prepared for the bar, and was admitted at the July term of the Supreme Court, held at Utica in 1811.

James Kent, the illustrious jurist and legal commentator, was then chief justice of the State. Legal gentlemen of that day, who saw Judge Kent on the bench, have frequently described the calm, unstudied dignity with which he presided over the courts; and his opinions, which were often pronounced without time for study or elaboration, were regarded at the time, as the finest display of judicial skill and rectitude ever made.

Mr. Griffin commenced practice at Clinton. In the month of February, 1812, he was united in matri-

mony to Miss Hannah Morrison. After practicing at Clinton eight years, his growing reputation as a lawyer demanded a more extensive field; and, at the solicitation of several prominent citizens of Utica, he removed to that place, where he continued to practice until the year 1825, when he removed to the city of New York, and entered into a large and extensive practice. His reputation extended throughout the State, and his practice in the Court for the Correction of Errors, in the Supreme Court, and in the various circuits in the State, was equaled by few lawyers then at the bar. Like Elisha Williams, he seemed almost ubiquitous. Now in Buffalo, then at Bath, then at Albany, and then at New York. He was one of the counsel for the defense in the famous case of the People *v.* the three Thayers, tried at Buffalo, in 1825. He was retained with Mr. Williams in the case of the People *v.* Bishop, referred to in the life of Joseph L. Richardson, but owing to an engagement in the Court of Errors, he was not present when that great trial took place. During his residence in New York, his practice was frequently interrupted by those fearful eclipses of reason which are referred to in another part of this sketch.

Among the many important cases in which he was retained, that of the Bank of Utica *v.* Wager tended most to increase and extend his reputation. This was an action commenced in the summer of 1821 on a promissory note executed by Philip Wager, on the 19th of March, 1821, for one thousand dollars, payable to the order of Smalley & Beecher, ninety days after date, at the Bank of Utica. The case was tried at Utica, in November, 1821, before the Hon. Jonas Platt, then one of the circuit judges. It was one of great importance, not only to the legal profession, but to the commercial world. It was not the amount involved that gave it so much interest, although in those days one thousand dollars was a large sum of money, but it was the nature of the defense set up by the defen-

dant, which was usury. Down to that time the policy of the statute of usury had not been fully vindicated by the Supreme Court, and this branch of the law, like many others, was then unsettled.

The legal contest which followed the issue in this case, has never been equaled in any other action of this nature, in the State. After a closely contested trial, and a full hearing of all the facts, Judge Platt ordered a verdict for the Bank, subject to the opinion of the Supreme Court. Accordingly a case was made, and the suit went to the general term, and was argued before that tribunal in the city of New York, in May, 1824. H. R. Storrs, then one of the ablest lawyers in the State, opened the argument for the plaintiff in a strong and masterly speech. Joshua A. Spencer opened the argument for the defense in a brief but learned and powerful effort—such an effort as might well be expected from that great and distinguished lawyer.

Mr. Griffin made the closing argument for the defense. When he arose to address the court, many supposed that the subject had been so perfectly exhausted by Mr. Spencer, that whatever else might be said, would be but the work of supererogation. A few moments, however, sufficed to convince all present, that, as by intuition, Mr. Griffin had penetrated deeper into the subject, had more fully and logically grasped the great questions of the case, than either of the other counsel. His argument was one of the most able, profound, and elaborate ever heard at the bar of this State. Every authority bearing on the matter, whether American, English, or French, was fully considered, examined and digested. It was lengthy, yet did not touch upon anything which could excite the fancy or please the imagination. It contained nothing but logic and learning; yet the court and bar listened with deep and unwearied attention. Such was its power, that all who heard it were lost to everything except the words which fell

from the lips of the eloquent and sagacious counselor. He was full of his subject; he had completely mastered it, and his language flowed with intellectual energy, with an undefined delicacy and beauty of expression, which caused a "virtue to go out from it."

The labors of Mr. Griffin were fully rewarded by a great and signal triumph. The court sustained him in his view of the case. The verdict rendered against his client at the circuit was set aside, and a judgment directed in his favor against the Bank. The judgment of the court was pronounced by Chief Justice Savage in a profound and learned opinion, which is reported in 2 *Cow.* 763.

This opinion established certain principles in regard to the law of usury—the manner of casting interest—the effect of custom or usage upon questions of usury—what is sufficient evidence to constitute a corrupt or usurious agreement—what is *lex mercatoria* and how proved. Finally, it fully vindicated the policy of the statute of usury. The Bank, however, was not disposed to submit to this decision without another effort. Accordingly, an appeal was taken to the Court for the Correction of Errors, then the court of *dernier resort* in the State, where the contest was again renewed. The case was argued in that court at Albany, in December, 1826. James Talmadge was then lieutenant-governor and president of the Senate, and consequently the presiding officer of the court. The case was now incorporated with another which the Bank then had pending against Smalley & Barnard, in which the same questions were involved. Benjamin F. Butler and J. Platt appeared for the Bank. Mr. Griffin and Mr. Spencer for the defendants in the combined cases. The argument of Mr. Griffin in the Court of Errors was superior even to that which he made before the Supreme Court. He seemed to rise with the occasion, and to gain mental power and strength as such power and strength were



demanded, and he was again victorious. As there was no appeal from the decision of this court, the Bank was compelled to submit.

The proceedings of the Court of Errors in the case of *The Bank of Utica v. Wager* is reported in 8 *Cow.*, 398, and is regarded by the profession as a leading case; although its doctrine has been somewhat modified by the Court of Appeals in *Marvine v. Haymer*, 12 *N. Y.*

The victory of Mr. Griffin in this case was purchased at a fearful expense. So great were his labors in the preparation, trial, and argument of it, that a cerebral agitation soon followed, which through life at times quite unsettled his splendid mind. Everything within the range of medical skill was done to heal the mental malady, but who can

“minister to a mind diseas'd,  
Or raze out the written troubles of the brain”?

The disease often left him for years, during which his fine intellect shone out in unclouded splendor.

In the month of September, 1826, William Morgan, a citizen of Genesee county, was abducted, and, as was alleged, murdered by certain leading Masons, in consequence of disclosures which he had made concerning the rites and secrets of that order. This immediately led to one of the most bitter and acrimonious political contests which ever agitated the State. In some localities, so terribly were the people incensed against Masonry, that it amounted almost to frenzy. Leading Masons were prosecuted and punished with vindictive fury; for a time, lodges were obliged to discontinue their meetings, or, like the Covenanters of Scotland, were compelled to meet in secret, where the blazing fury of Anti-Masonry could not detect them. The abduction was conducted with singular skill and success. Whatever fate befell Morgan, remains a secret unknown to all, except that great King “from whom no secrets are hid.” It was alleged by some

that heavy weights were attached to him, and he was thrown into the Niagara river. In support of this theory, certain persons asserted that one night, while fishing in the river, their attention was attracted to a phantom-like boat, which moved swiftly over the dark waters, propelled by muffled oars. When the boat reached the center of the stream it stopped—something resembling a human form was lifted from it, one long, piercing, horrid shriek rang out on the night air, one splash on the water followed, and all was still—the river rolled on, as it rolled before. The boat shot noiselessly away, and was soon lost from sight, leaving no trace of its occupants behind. This was believed to be the scene of Morgan's death. Others asserted that he was strangled in a gloomy dungeon connected with Fort Niagara; while others contended that he went to a distant land, where he died.

Suspicion fell upon certain persons, whom it was believed were guilty of his death. They were accordingly indicted and brought to trial. The legal questions growing out of their trial were intricate and interesting. For a long time they absorbed much of the time and attention of the courts. John C. Spencer, of Canandaigua, was appointed by the governor to conduct the prosecution against the abductors.

Early in January, 1827, several persons who were concerned in the affair, were brought to trial before his Honor Enos T. Throop, then one of the circuit judges, at Canandaigua. All pleaded guilty to a charge of conspiracy to kidnap Morgan, excepting one; he was tried and convicted.

Judge Throop was not a Mason, nor was he an Anti-Mason, but in sentencing the convicts, his eloquent, severe and just language, won much commendation from all persons.

In November, 1829, one Mather, a leading and prominent conspirator in the Morgan abduction, was brought to trial before Judge Gardner, at the Orleans Circuit. This was one of the most important trials

growing out of the Morgan affair. Mather prepared to defend himself with vigor and success. Accordingly, he sent to New York and retained Mr. Griffin to conduct his defense. Vincent Mathews, Daniel D. Barnard, and William H. Adams, were also retained with Mr. Griffin. Such an array of talent could not fail to inspire hope and courage in the accused. The trial was conducted with signal ability on both sides. After a protracted trial, the jury rendered a verdict of not guilty. Mr. Spencer was greatly chagrined at this result, and immediately moved for a new trial, which brought the case before the general term of the Supreme Court. The argument of the case took place in the city of New York, in May, 1830. William L. Marcy was then one of the justices of the court, and wrote its opinion, which is regarded as one of the ablest in our reports.

Like all of Mr. Marcy's opinions, it is written with much precision, with great perspicuity, and with all the affluence of legal learning. Few cases in our earlier reports decide more intricate and important questions than *The People v. Mather*. Its doctrine has been approved by the Supreme Court of Pennsylvania and of many other States. The points in the case were principally prepared by Mr. Griffin, but owing to ill health, he did not argue the case before the Supreme Court, and that duty fell upon Mr. Barnard. Mr. Spencer argued the case for the people; but he was again unsuccessful. The verdict of the jury was sustained, and Mather fully acquitted.

Mr. Griffin continued to practice in New York with much success until he was again seriously attacked by his mental difficulty. He remained, however, in New York until 1842, and having recovered from the attack, he returned to Rochester, where he continued until his death. During his first residence in Rochester, Honorable E. Darwin Smith was a student in his office. A strong and lasting friendship immediately commenced between preceptor

and pupil, which terminated only with the life of the former.

After Judge Smith's admission to the bar, he married a daughter of Mr. Griffin, and subsequently entered into partnership with him, which relation continued until Mr. Smith was elected a justice of the Supreme Court, when Mr. Griffin formed a copartnership with his grandson, Vincent M. Smith, Esq. Mr. Griffin was at one time a partner of Selah Mathews. Soon after his removal from New York, he became a partner in business with Thomas C. Montgomery, Esq. He was for some time recorder of the city of Rochester, and discharged the duties of that office with marked ability. The last important professional matter in which he was engaged, was that of *Freeman Clark v. The City of Rochester*.

The questions in that case arose in an action brought to recover the sum of forty-one thousand seven hundred and forty dollars, paid for principal and interest by the plaintiff in the action, upon a contract for the sale to him by the defendants of three hundred shares of the stock of the Rochester and Genesee Valley Railroad Company, issued under and in pursuance of sections 285 to 292, inclusive, of an act to amend the charter of the city of Rochester.

The case was tried before Hon. W. F. Allen, then one of the justices of the Supreme Court for the fifth judicial district, without a jury, who found as a conclusion of law upon the facts stated in the case, that the said sections 285 to 292 inclusive of the act aforesaid never became a valid law of the State, and that the subscription to, and taking of, the said three hundred shares of the stock of the Genesee Valley Railroad Company, authorized and taken under said sections, were illegal and void; that the several payments made by the plaintiff to the defendants therefor, were made without consideration, and that the plaintiff was entitled to rescind the said contract and require the repayment and recover against the defen-



dants the several sums, with the interest thereon, and accordingly rendered judgment for the plaintiff for the money so paid, deducting certain offsets specified in the case.

The city having been thus defeated, appealed to the general term of the Supreme Court, and the appeal came on for hearing in March, 1857. In conducting the argument for the appellant in this case, Mr. Griffin exhibited those extraordinary powers of reasoning, comprehension and research,—all that clear poise of mind and power of discrimination, which characterized his earlier professional efforts. This argument was regarded by the bench and the bar, as a great and powerful effort, of which the ablest counsel in the State might well have been proud.

“The determination of this cause,” said Mr. Griffin, “requires the deliberate and careful examination of the powers of the legislative and judicial department of our government. In this country, government is divided into three departments—legislative, judicial and executive. The legislative, to pass laws, the judicial to construe them, and the executive to see that they are enforced. These departments are created entirely distinct, by the Constitution, and the public good requires that they should be kept so. The Constitution being the supreme law of the land; the judicial department is necessarily empowered to construe it. A laudable desire to protect the citizens from the exercise of what the judges may consider a dangerous power conferred by the legislative department, has, in some instances, induced courts by construction to trench upon the powers of this department. That cities and towns have suffered from the exercise of such powers as are conferred upon the city of Rochester, must be admitted; and such constructions are apt to have their influence upon the decision of courts, in all such cases.

“A general sentiment pervades the community, that



it is unwise and inexpedient to confer upon municipal corporations the power to engage in the construction of railroads. This sentiment may be just, but the court will bear in mind that the wisdom or expediency of a law is kept solely and exclusively with the legislative department of our government. No other department has a right to interfere with the exercise of the power to pass laws. Every law passed by the legislative department is presumed to be constitutional; and all courts are bound to approach the examination of every question involving the constitutionality of a law under the influence of such a presumption (1 *M'Cook's Ohio N. S.* 82). It should be the wish and anxious desire of all the courts to uphold and sustain the authority of the legislative department.

“The rule which we contend for is this: That no law should be declared unconstitutional, unless the court, starting with the presumption that it is constitutional, should become satisfied, *beyond* any doubt or hesitation, that it was clearly, *plainly and palpably unconstitutional*. We contend that this is the only safe rule, and that it is supported by the decisions of every respectable tribunal in this country which has ever pronounced an opinion upon the subject.” In support of this position, Mr. Griffin referred to a large number of English and American cases.

He insisted that the Legislature, when acting within the scope of the legislative department, can pass any law not expressly prohibited; and that the decision in this case might safely rest upon the inability of his opponents to produce any such prohibition.

“If the framers of the Constitution,” said Mr. Griffin, “mean to restrain the Legislature in the exercise of any particular power, they would plainly say so. They would leave no doubt on the subject. This prohibition is not made out by process of reasoning, but by putting your finger upon the prohibition itself. *Lieber on Civil Government*, ch. 15, § 25; 2 *Burr.*,

285 ; 2 *Rawle*, 374 ; 1 *Jones*, 61 ; *Hartman v. Commonwealth*, 5 *Harr.*

“ With all due deference to the course pursued by the learned, ingenious and able judge, who presided at the circuit and pronounced the law under which the defendants have acted unconstitutional, I submit that he has departed from the well known established rule laid down by the sages of the law who preceded him, and practically said that any law is unconstitutional which can by process of reasoning be made plausibly to appear so. He has practically repudiated the plain, safe, and well established rule, and adopted one eminently unsound in principle and unsafe in practice. Is the rule thus practically established by his honor, in this case, a safe rule, in the construction of constitutional powers? We think not, and trust your honors, when you reflect upon the dangers which will result from the adoption of such a delusive standard or rule, if it can be called a standard or rule, will concur with this opinion. What, then, are the powers of the legislative department of our State government ?”

Mr. Griffin proceeded to argue with great force and power, that question. He contended that all the inherent powers of the people for self-government, not delegated to the general government, are reserved to and belong to the State. Of such reserved powers the entire legislative power is vested in the State Legislature, subject to no restrictions or limitations except such as are contained in the State Constitution. The taxing power belongs to the Legislature, and is subject to no limits or restrictions outside of the United States and State Constitutions. The power to authorize the construction of works of internal improvement, and to provide for their construction by the officers or agents of the State, rests with, and pertains to, the Legislature, to be exercised within its exclusive jurisdiction. Such works may

be constructed by general taxation, and in case of local works, by local taxation; or the State may aid in their construction by becoming a stockholder in private corporations; or authorize municipal corporations to become such stockholders for that purpose. Railroads are public works and may be constructed by the State or by corporations, and lands taken for their use are taken for the *public use*, and may be taken on payment of a just compensation. The Legislature is the exclusive judge in respect to what works are for the public benefit, and in regard to the expediency of constructing such works, and as to the mode of their construction, whether by the State or by private or municipal corporations, in whole or in part.

The Legislature, therefore, may authorize municipal corporations to subscribe to the stock of a railroad company, with the consent and approval of a majority of the corporators, duly ascertained. The passage of a law authorizing such subscription to the stock of a private corporation, subject to the assent or approval of a municipal corporation, by the vote of the corporators, is not a delegation of power to the corporation to pass a law, but it is a legitimate case of conditional legislation, and is entirely within the discretion of the Legislature. Such was the substance of Mr. Griffin's argument.

The late Selah Mathews of the Rochester bar, replied to Mr. Griffin. He was a nephew and a student of Vincent Mathews, and partook of many of the characteristics of that distinguished man.

Selah Mathews, in many respects, was one of the ablest lawyers in western New York. His mental qualities were not only marked by breadth and brilliance, but they were remarkable for their strength and intensity. His patient, abiding industry and inquiry rendered him familiar with all legal authorities. His retentive memory and the orderly distribution of his

knowledge placed the result of his immense reading at his ready disposal.

It was pleasing to observe him while engaged in a legal argument. Was there an authority referred to by his opponent, when the volume containing it did not happen to be present? If there was the least departure from the construction which the court had given to the point, Mathews would instantly detect it, and if he was to reply, make a note of it and reserve his correction until he replied; if not, he would courteously set the matter right, on the spot. "The counsel's memory is not quite correct, or mine is greatly at fault, and I beg leave to state my recollection of the case," he would say on such occasions; and those who knew him best seldom took issue with his interpretation of the matter.

His reply to Mr. Griffin comprehended all that could be brought to bear in sustaining the position of the plaintiff in the case. It was an argument such as courts, lawyers, and even laymen delight to hear,—an argument with which Mr. Justice Johnson coincided in a strong and ably written opinion in which he dissented from his brethren of the bench, feeling himself "constrained by the rigor of the maxim *stare decisis*, to hold that the sections of the statute in question were never properly enacted by the Legislature, and never had any force or authority as law, and consequently, the bonds issued under them were void and the action properly brought."

The other judges, however, sustained Mr. Griffin, and the decision of the special term was reversed.

The opinion of Judge E. D. Smith in the case possesses great merit for its learning, clearness, and force; a careful examination of it would be useful to the student, the practitioner, and the business man, while that of Judge Strong fully sustains his high judicial and legal abilities. Judge Wells wrote no opinion, but he fully concurred with Judges Smith and Strong.



A more extended history of this important case would be interesting to the reader, but it would extend beyond the limits of this work.

In early life Mr. Griffin was an ardent admirer of Hamilton and Adams, consequently, he was then a Federalist. He became a strong and influential supporter of Governor Tompkins. The "frank, manly, and ingenuous disposition, the true nobleness of soul which characterized the governor in public and in private life," had peculiar charms for a mind like Mr. Griffin's, and through life his relations with him were most friendly and intimate.

In the presidential contest of 1828 he ardently sustained Andrew Jackson for the presidency; but when his administration closed, Mr. Griffin became a member of the Whig party, and subsequently a Republican.

He was an ardent patriot, and the secession of the Southern States after the election of Mr. Lincoln, in 1860, greatly excited him. The situation of the country often disheartened him, but such was his unfaltering confidence in the patriotism of the people that he never doubted our triumph over armed and formidable treason.

In all his domestic relations, Mr. Griffin was happy and fortunate. As a lawyer, he had few equals in the State. Had it not been for the mental difficulties with which he was frequently afflicted, he would have attained the very highest professional distinction. In conducting his cases, "he uniformly examined the whole range of discussion, and sought such a result as he believed would be reflected by the mirror of the law in its truth and purity. The case of his client was always an object of peculiar solicitude; no principle, no case bearing on the subject, within his extensive knowledge and various reading, was omitted. His conclusions thus carefully formed were maintained by him before the various courts in which he practiced, with a firmness and boldness which resulted



from a consciousness of their accuracy, eminently calculated to aid the researches of the most enlightened and experienced tribunal."

He read with pleasure Milton's sublime epic, and lingered with delight over Shakespeare's immortal page, where imagination revels equally in regions of mirth, beauty, and terror; now evoking specters, now sporting with fairies, now conversing with calm and recondite scholars, and now "ascending the highest heaven of invention." He had a deep, religious sensibility, which never rested until it found its true perfection and manifestations in every day's practice, and in all the concerns of life. Like Vincent Mathews, Mr. Griffin continued in the practice of his profession until the last days of his life, and he fell from the ranks of his professional brethren into the arms of death, "with the harness upon him," a legal Marmion, falling beneath that standard which aroused his youthful ambition. He died on the twenty-second day of January, 1861, in the seventy-third year of his age, in full possession of all his mental powers, calm as midnight, yet bright as the still summer noon, disturbed by no throb of passion or of sorrow, with no sigh of regret for the world he was leaving, resting on that faith "which takes hold of immortality."

## NICHOLAS HILL.

Remarks of an Eminent Writer Concerning Erskine Apply to Mr. Hill.—His Character in some Respects Resembles J. C. Spencer.—Hill's Devotion to his Profession.—His Ambition Confined to it.—The Professional Eminence which Mr. Hill Attained.—His Youthful Characteristics.—Becomes a Law Student.—Is Admitted to the Bar.—He turned all his Intellectual Efforts to Law.—Commences Practice at Amsterdam, New York.—Removes to Saratoga.—Judge Cowen.—Hill forms a Copartnership with Sidney Cowen, Esq.—Engages in the Preparation of the "Notes to Phillips's Evidence."—Mr. Hill's Love of Justice illustrated.—The Will.—The Insidious Designs of a Father Thwarted.—His Rage.—The Lawsuit and the Result.—Mr. Hill's Progress at the Saratoga Bar.—He is Appointed State Law Reporter.—Character as a Reporter.—Removes to Albany.—Forms a Partnership with Messrs. Cagger & Porter.—The Character of the Firm.—Mr. Hill gave his Profession no Divided Allegiance.—Entered into Law as Newton did into Astronomy.—Resembled Lord Brougham in his Capacity for Physical and Mental Labor.—Description of Hill's Labors During the Session of the Court of Appeals.—Mr. Hill's Appearance at the Bar of the Court of Appeals Described.—Anecdote.—Incident connected with the late M. S. Newton.—Can Courts be Influenced?—Interesting Incident Related by Mr. Hill.—Its Effect.—Personal Characteristics of Mr. Hill.—His Capacity as a Jury Lawyer.—Manner before a Jury.—His Physical Powers begin to Fail.—Retires from the Bar for a time.—Hopes of his Friends.—His Sudden Death.—Scene in the Court of Appeals on the Announcement of his Death.—Eulogy of J. H. Reynolds.

To describe Mr. Erskine at the bar, says a writer, is to ascertain the highest intellectual eminence to which a barrister under the most favorable circumstances may safely aspire; and the remark will apply to Mr. Hill, for it is no exaggeration to say of him, that he belonged to the front rank of American lawyers.

In some of his characteristics he resembled John C. Spencer; they were both creatures of pure intellect, active and restless—men of vast research, vigorous logic, practical wisdom, unwearied industry, and capable of immense intellectual labor. Both were wanting in enthusiasm, creative imagination, fancy, and poetic

fervor; and both were close, critical, reasoning lawyers. But here the analogy ends; for much of the power which impelled Spencer to action was political ambition; this led him into a varied career, in which opinions and personal relations were subordinate to political ambition. He divided his great talents and his extensive learning between the bar and the political arena, between the duties of the legislator and the cabinet minister.

Mr. Hill, on the contrary, concentrated all the powers of his mind upon his profession. This gave him a mastery at the bar which few men are capable of attaining. He disliked politics, and there was nothing in official position that could attract him from the one chosen sphere to which he devoted himself. He was ambitious, but his ambition was that of the lawyer divorced from politics, and, therefore, his knowledge of the law, his power of applying it to practical use, of wielding its subtleties with facility, of grasping the points in a legal question, and separating truth from error, rendered him unequalled at the bar of the State.

Though Nicholas Hill gained the highest eminence in his profession, and adorned the American bar, yet he was never desirous of "decking himself with those trappings of learning, or of swelling out his reputation above its natural bulk, by those adventitious honors which are so easily acquired in this country, where every city is filled with learned societies amply furnished with sounding names and a large list of well titled officers."

His life was unvaried by those events which excite the ambition of the politician or the statesman. It was spent over books, whose pages were often illumed by the midnight lamp, before courts—before grave and learned judges, whose deliberations were aided and whose minds were enlightened by his learned and powerful arguments.

Nicholas Hill was born in the county of Mont-

gomery, New York, October 16th, 1806. His father was a Revolutionary soldier, who, on leaving the army, became a preacher of the Gospel, and lived to a very venerable age.

Young Hill early exhibited a love of books, an unusual strength and tenacity of memory—a desire for knowledge—a meditative mind, which, with an indomitable energy and perseverance, enabled him, with but little aid from his father, to acquire sufficient classical learning to commence the study of law with profit and success. As a law student, he exhibited the same unwearied powers of research which characterized him amid his brilliant and successful career at the bar.

It was once remarked of Dr. Chalmers, that whatever science he happened to touch, was instantly transmuted into theology; and it may well be said of Nicholas Hill, that whatever facts or principles within the range of human knowledge, at any time excited his attention, became subservient to one common purpose, and aided to render him more accomplished and learned in his profession; for, in the operations of the intellect, as well as of the will, the prevailing passion, like Aaron's serpent, swallows up all the rest.

After his call to the bar he commenced practice at Amsterdam, meeting with ordinary encouragement. At length he removed to Saratoga, where he made the acquaintance of the late Judge Esek Cowen, "whose life seemed to offer that example of singleness of purpose, devotion to his profession, and unwearied industry, upon which he molded his own career."

He afterwards formed a copartnership with Sidney Cowen, Esq., a son of Judge Cowen. Associated with Mr. Cowen, he prepared that great work known to the legal profession throughout the nation, and in England, as "*Cowen & Hill's Notes to Phillips on Evidence*," which remains a lasting monument to the ability, energy, industry, and learning of its authors;

a work which may be considered a law library by itself.

There was in the character of Mr. Hill an innate love of justice and right ; hence he could not tolerate injustice, duplicity, or fraud, "could not be petty, unfair, or disingenuous ;" and in all his practice he never, if it was possible for him to prevent it, allowed injustice to triumph. These traits were illustrated by an incident which occurred early in his career.

While at Amsterdam, soon after his admission to the bar, he was called upon to draw a will for a man by the name of Christian—a farmer, whom he held in high esteem. This man had been ill for a long time, and, aware that he was near his end, desired that his matters should be properly adjusted before his death. He was about forty years old, with a wife and two children—a daughter ten years of age, and a son of six. His property amounted to twenty-five or thirty thousand dollars which he had accumulated since his marriage.

Christian had a father, a hard, grasping, insidious old man, with a strong controlling character. For several weeks he had been constantly with his son.

On arriving at the residence of his friend, Mr. Hill was received with great cordiality by the elder Christian, who at once assumed a very confidential manner towards him ; so attentive was he to the young lawyer, that he hardly gave him an opportunity to pay his respects to Mrs. Christian.

"Mr. Hill," said she, "I am very glad you have come ; I know you are my poor husband's friend, and—and—I wanted to"—

"Never mind, Mary, John is waiting for us, you know, and Mr. Hill has no time to hear any lengthy talk. This is the way, sir. John is quite low, and what is done must be done immediately," said the old man, moving towards the room where the sick man lay. The look which the grief-stricken woman



gave the lawyer as he parted with her, spoke volumes, which, with the actions of the elder Christian, convinced him that there were matters below the surface, which he ought to understand.

On entering the sick-room, the old man took his seat by the bed of his son, in that business-like manner, which clearly indicated that he was to be a party to the business in hand.

Mr. Hill conversed a few moments with the sick man on general topics, and then asked him if he was ready for him to commence drawing the will.

“I am,” was the reply.

“Then you will please retire, for I am accustomed, when engaged in drawing a will, to be entirely alone with the testator,” said Mr. Hill to the elder Christian.

“Oh! this matter is all understood between John and me, and it is his wish that I remain in the room, isn’t it, John?” said he.

The sick man gave a faint response in the affirmative, which convinced Mr. Hill that his first impressions were right, and he was determined that the old man should leave the room.

“Mr. Christian,” said he, “I cannot draw this will until you leave this room; if you insist upon remaining, I shall leave at once.”

“But my son is very weak, and will need me here to nurse him while you are at work.”

“I will see to that; I shall not be engaged long, and I will undertake to care for him while I am engaged,” said Mr. Hill.

“Father, I think you had better retire; Mr. Hill is an old friend of mine; I can trust him, and I want him to draw my will, very much,” said Christian.

“Well, John, I can go; but you must not forget—you must remember to—take your medicine,” said the old man, giving his son a peculiar look as he was leaving him.

“Christian,” said Mr. Hill, as soon as the door closed on his father, “now tell me the manner in which

*you* desire to dispose of your property, and I will soon prepare your will accordingly.”

In a few words, the sufferer informed him that he proposed to give his daughter eight hundred dollars, for the purpose of educating her, and all the residue thereof, after deducting his wife's thirds, was to be given to his father in trust for his son, who was to receive it when he attained his majority. The old man to be named as sole executor. These were substantially the conditions of the will.

This greatly astonished the lawyer, and he felt confident that left to himself, his friend would never make such an unnatural disposition of his property; he believed, and justly too, that the iron will of the old man had influenced his son to give him the possession of his property for fourteen years, and, in effect, to disinherit the daughter. He now fully understood the pleading look of Mrs. Christian, and why she was so anxious to see him; he was in great doubt as to the manner in which he should proceed. The way in which his client disposed of his property, was clearly nothing to him, and yet he did not regard it as his duty to permit such a flagrant act of injustice. After a few moments' reflection, he said :

“Mr. Christian, you are, as you say, on your dying bed; now let me ask you if you really desire to dispose of your property in the manner in which you have just stated?”

“Oh, Mr. Hill, I have been through so much—have suffered so much, and have had so many things said to me, that I don't care what becomes of my property—but I—I—think—I hope my father will do what is right—he's promised me he would.”

“This business is nothing to me, Mr. Christian; but it is your duty to deal fairly and justly with both your children, and to dispose of your property as to you seems just, uninfluenced by others. It is *your* will that I have come to draw, Mr. Christian; now is the time to exercise your own judgment, so that when

this business is done you will feel conscious of having discharged your duty fairly, impartially, and unadvised, according to the dictates of your own heart," said Hill.

After reflecting a few moments, Christian said :

"Mr. Hill, promise me that you will be a friend to my poor wife and children when I am gone."

The promise was given. He then directed Hill to commence the will, and he would dictate the conditions. When the instrument was nearly completed, the lawyer asked him who he desired to act as executor.

"My father expects—but no matter, as the will reads, he had better not act. Will you not act, Mr. Hill?" asked Christian.

"No, I cannot act; you should select some very near relative, one whom you have always esteemed and trusted, one who has some deep feeling for you," was the answer.

"Can my wife act?"

"Certainly."

"I should like to have her act very much, but then it would displease my father terribly; and I tell you, Mr. Hill, he's a fearful man when his anger is aroused," said Christian.

"You have no doubt of her capacity, I suppose."

"No, she has more than ordinary ability, or I should not have had this property; and she has been the kindest and truest friend I ever had in this world"—

"And the mother of your children, Mr. Christian," said Mr. Hill, interrupting him.

"Oh, yes, yes, and you may make her my executrix. If she was faithful to me while living, she will be so when I am dead; but you must protect her from my father."

Accordingly, Mrs. Christian was named sole executrix; two reliable neighbors were called in for witnesses, the will was duly signed in their presence, and

by request of Mr. Christian, Mr. Hill was made the custodian of it until it was proved. The lawyer then took leave of his friend.

As he was passing through the hall which led to the street, he was met by the old man who, with many smirks and smiles, said :

“ Well, Mr. Hill, the will is all right, is it? John knows pretty well what he’s about and who he can trust, I assure you. Where is the will ?”

“ In my pocket,” was the reply.

“ Well, I’ll take it; that was the understanding.”

“ I am directed to keep it, Mr. Christian, until it is needed for proof,” said Mr. Hill.

“ Well, I don’t know but that will do, though it ain’t as we talked,” said the old man, and Mr. Hill departed.

After the death of Mr. Christian, the will was opened and read in the presence of the family and friends. It proved to be a very different affair from what the elder Christian expected.

It provided for an equal distribution of the property of the deceased between the two children. After giving the widow a liberal portion, the remainder was left in her hands, in trust for her children, until they were of age, making ample provision for their support; it also provided for their education.

The rage of old Christian knew no bounds, when he heard these conditions of the will, and he prepared to contest its validity. With scarcely any chance for success, he commenced proceedings to annul it. Everything that legal ingenuity could suggest was brought to bear against it, and one of the most important litigations in Mr. Hill’s early practice ensued; but it ended in the triumph of the widow, adding much to the reputation of Mr. Hill as a lawyer. The infant son of the deceased grew to manhood, removed to Chicago in the early days of that city, and became a man of wealth. He died in the year 1867, ever retaining a veneration for the name of Nicholas Hill.

The unassuming manner and native modesty of Mr. Hill tended at first to retard his progress at the bar. Though a close and powerful reasoner, he did not possess those showy elocutionary qualities which dazzle the multitude and bring a lawyer rapidly into notice. Though he loved the forum and delighted in its contests, yet there were many of the attributes of the retiring scholar in his nature, and hence he derived the most sincere pleasure in the silence and retirement of his study.

He had many qualities which constitute the successful jury lawyer, and gradually attained a high position as an advocate. Marcus T. Reynolds and Samuel Stevens, for several years his great rivals in the profession, had been distinguished at the bar of the Supreme Court in banc and in the Court for the Correction of Errors, a long time before Mr. Hill was known in either of those tribunals.

But from his first appearance there, he created a very favorable impression on the minds of all the members of the court. In the case of *Tilden v. Gardiner*, which was one of the earliest argued by him before the General Term his argument was listened to with profound attention by both the bench and the bar. "We shall hear from that man very often hereafter," said Chief Justice Nelson to Judge Bronson, as he was folding the papers in the case, after the conclusion of Mr. Hill's remarks. Doubtless the reputation which the *Notes to Phillips on Evidence* had given, aided him in gaining the confidence of the judges, and in obtaining the appointment of State law reporter in 1841. The manner in which he prepared these reports greatly enhanced his reputation. They are characterized by the same methodical and expansive mind which is conspicuous in all his works.

He was one of the most accomplished and accurate special pleaders in the State, and few exceeded him in the faculty of analyzing a complicated



question, or clinching a contested conclusion. These qualifications greatly aided him in the labors of reporting the adjudicated cases of the State courts, enabling him to adjust them so that the student or practitioner could determine at a glance the real points decided in them. Soon after receiving this appointment he removed to Albany, where he resided the remainder of his life.

He occupied the position of State reporter five years, when his increasing legal business compelled him to resign. Soon after his resignation, he formed a copartnership with Peter Cagger and John K. Porter, constituting a firm which combined every variety of legal talent—a firm which was distinguished for its capacity and for the vast amount of legal business which it controlled. Each of its members possessed attainments which gave them superiority at the bar, or in whatever intellectual field they chose to enter.

Mr. Hill devoted himself to the General Term and the Court of Appeals; at length his business at the latter court increased to such extent that he was compelled to confine himself almost exclusively to that tribunal.

Many of his compeers at the bar gave to their profession divided allegiance, or loved it for the applause it brought, and the rewards it secured. With Mr. Hill this was a secondary consideration; he entered into the investigation and research of the law as Newton, Kepler, and Galileo did into the science of astronomy—Handel and Mozart into harmony—Cuvier into the study of mollusca—Stewart, Locke, and Hamilton into metaphysics.

With him it was the application of an ardent and scholastic mind to its favorite theme. As the powerful lens of Herschel swept the heavens discovering new stars, orbs, and sidereal bodies, measuring their proportions by practical mathematical principles, so the intellectual lens of Hill was turned to the field of

judicial science ; through it he observed and scanned every principle of the written and unwritten law, compared every conflicting precedent, revealed the hidden treasures of musty tomes, rendering them applicable to modern jurisprudence. Thus the labor which he performed was astonishing.

In his capacity for intellectual and physical endurance, he resembled Lord Brougham, of whom it was said he was not one, but legions. "At three in the morning he would make a reply in Parliament, which blanched the cheeks and appalled the hearts of his enemies ; at half past nine he would be found in his place in the court room, working out a case in which a bill of five pounds was disputed, with all the plodding care of the most laborious junior. This multiplicity of avocation and division of talent suited the temper of his constitution and mind. Not only did he accomplish a greater variety of purpose than any other man—not only did he give anxious attention to every petty cause, while he was fighting a great political battle and weighing the relative interests of a nation—not only did he write an article for the *Edinburgh Review* while contesting a county, and preparing complicated arguments on Scotch appeals by way of rest,—but he did all this as if were perfectly natural to him." The labors of Brougham, though more desultory than those of Hill, were not more intense or more enduring.

During the sessions of the Court of Appeals he was constantly in his seat at the bar, from the opening to the close of the term ; concerned in nearly three fourths of the causes on the calendar. He was often engaged in the argument of a case during the entire day, and at night retiring to his study, he would remain there until after the clock tolled the hour of midnight ; "the fire which burned in the tough fabric of his intellect" as undimmed when the last page was turned—the last note made, as it was when he first arose in the morning.

During vacation he would be in his office during the day, and continue his labors far into the night. Thus he prepared those voluminous briefs on whose pages there was often a reference to many hundred cases; each one of which he had thoroughly studied and analyzed.

Strangers visiting the court room at Albany always desired to have Mr. Hill pointed out.

In the summer of 1857, a young law student from Rochester, with a friend who resided at Albany, visited the Senate chamber where the Court of Appeals was sitting. There were in the bar at the time, a large number of lawyers from various parts of the State. After looking over the bar for some time, the young man inquired if Nicholas Hill was in the court room. His friend replied, "He is, and I want you to point him out, if you can." Scanning each face within the bar with great scrutiny, the student at last fixed his eyes upon a man a little below the medium height, slenderly built, with a sharp and somewhat wrinkled face, but full of fire and intelligence, dark hair, in which the silver lines of advancing years began to be blended, and who carried one of his arms in a peculiar manner.

"That, according to the description which I have often heard, is Mr. Hill," said the young man, pointing to the person who has been described.

"You are right, that is Nicholas Hill, a lawyer more thoroughly identified with this court than any other lawyer at the bar."

The courtesy and generosity of Mr. Hill to his brethren of the bar, especially the younger members, was proverbial; he instantly perceived and liberally acknowledged their merits.

The late M. S. Newton, a highly respectable member of the Rochester bar, in the early days of his practice had a case in the Court of Appeals, which he prepared to argue himself. He had conversed with Mr. Hill on the leading points in the case, who assured him that, though the questions involved were

difficult and intricate, yet he believed the law was with him. The suit had been contested inch by inch from the Circuit to the Supreme Court, and from thence to the Court of Appeals, and in every instance it had been decided against Mr. Newton.

The term at which it was to be argued finally commenced its sittings, and Mr. Newton proceeded to Albany to argue his case. Soon after his arrival, he learned that the late William Curtis Noyes and Ambrose L. Jordan were to argue it against him. Alarmed by this intelligence, he sought the assistance of Mr. Hill.

“I will assist you, Mr. Newton,” said Mr. Hill, “if you desire me to do so; but let me advise you to argue it yourself; you have the ability, you are thoroughly prepared—you can do much better without me than you can with me. Young lawyers often injure their cause by calling to their assistance what is termed able counsel. If you succeed in a contest like this, alone and unaided, you will be entitled to all the credit.”

“But, Mr. Hill, only think of the array of talent that is against me, and the great influence of my opponents with the court,” said Newton.

“As to the talents of your opponents, although I admit it is great, yet you need not fear it; the law books reveal the same truths to you that they do to them, and as to influence with the court—I hear very much said about that, but depend upon it, the influence of this or that person, in our courts, amounts to nothing at all. If you have the law with you, that is the highest influence you can secure.

“In my early practice, I was once induced to procure the aid of a lawyer, who was supposed to have great influence with the court, to assist me in urging the judge to inflict a very light sentence on a client of mine, who had been convicted of an offense in which there were mitigating circumstances, and which ad-



mitted of a severe or a light punishment, in the discretion of the court.

“The lawyer to whom I applied, was at the time a State senator, and was really a man of great influence and ability; while I was young and inexperienced, and almost a stranger to the judge. My client was a man of some standing in the community in which he lived; his sentence was suspended until the last day of the term; when he was brought into court to receive it, his wife and children accompanied him, by the advice of my associate, who believed that their presence would aid him in softening the minds of the court. I saw by this, that even he needed outside influence to aid him, powerful as he was supposed to be with the court.

“My friend made a pathetic appeal to the court. It was apparently very effective, and I believed, with his great influence he would succeed in convincing the judge that my client should only be fined some nominal amount and discharged, but what was my astonishment and horror when I listened to a sentence which was to incarcerate him in jail for one year, and compel him to pay a fine of two hundred dollars. I will not attempt to describe the scene that followed; suffice it to say, that wife, children, friends, and myself, were plunged into the deepest sorrow. The influence of my counsel had failed and my client was ruined.

“The court adjourned for dinner, but my appetite was gone,—instead of going to the table, I stole away to a grove not far from the court house to hide my own grief and sorrow, for I had taken that interest in my client which rendered his case my own. At length I resolved to make an effort myself, to induce the court to modify the sentence.

“Before the bell ceased ringing I was in the court house; the moment the crier’s proclamation was ended, I was on my feet, and to the astonishment of the bar and spectators, I opened the motion for a



modification of my client's sentence. I do not know what process of reasoning I adopted, or what language I used; all I know is, that I threw my whole soul into my speech—that there was an entire surrender of what little ability and eloquence I possessed.

“After I took my seat, the judges consulted a few moments, and then I had the satisfaction of hearing the presiding judge announce that the court on further deliberation had decided to modify the sentence against Jacob Craig, so far as to remit the imprisonment, and to reduce the fine to the sum of fifty dollars. I need not tell you how great was my triumph; had a fortune been laid at my feet, had I suddenly been lifted to a sphere of worldly grandeur, it would have been nothing compared with the joy I felt at this announcement.

“My poor client was in jail, surrounded by his weeping children and heart-broken wife. I hastened to him, and when I informed him that he was released, he sunk pale and almost fainting into a chair. I shall never forget that scene—it was one which no actor could imitate. At length he found words to inquire of me how this was brought about.

“‘Did Mr. M. go and talk to the court again for me?’

“‘No, he was not in the court room.’

“‘Whom did you get to talk for me that was powerful enough with the court to have me released?’

“‘No one; I did all the talking myself,’ said I.

“‘What, you, such a young lawyer as you talk to the court—I thought you told me I must have a man of great influence, and one that was well known to the court?’ said my client.

“‘I did think so, and employed such a man, but rather than have you lay a whole year in jail, and pay so much money, I concluded to see what I could do for you,’ said I.

“Tears of joy, overflowing thanks, prayers for my future success in life, followed. I have the satis-

faction of knowing that for a long time those prayers were repeated in a family rendered happy by my efforts, which restored to them a husband and father, who, ever after, was an exemplary member of society.

“I have related this circumstance to you, Mr. Newton, to convince you that there is nothing in what is termed personal influence with courts. The result of my professional experience is, that he who thoroughly understands his case and the law applicable to it, will always have the attention of the judges, and this is all the influence which the most eminent advocate can ever have in our courts. Once more let me say, argue this case for yourself ; never stop to consider who is against you, there is not so much difference after all between men as some suppose, and as I have already said, the language of the law is the same to all.”

This conversation made a deep impression on the mind of Mr. Newton ; it encouraged him to undertake the argument of the case alone, which he did with such success that it was decided in his favor.

The hold which the domestic and social ties had on Mr. Hill, affords one of the most pleasing glimpses of his character. Such was the kindness of his nature, that even his prodigious professional labors did not exclude those amenities to friends, those affectionate attentions to kindred, for the neglect of which multiplied cares are often admitted as an excuse.

As over the hardest stones the softest moss will force its verdure and sustain its life, so amid intense toil the gentler features of his nature developed themselves as years rolled by, rendering his relations to his friends, his associations with the gifted men by whom he was surrounded, more pleasing and attractive ; causing his powerful energies to blend in harmony with all his social and family connections.

Mr. Hill's manner at the bar was calm, dignified,

natural, and unassuming. The vivacity and strength of his mind, his prodigious quickness of conception, his plain but ready language, rendered him an effectual speaker in the forum. He gained the attention of jurors by the natural force of reason; his language was never above or beyond them; it went direct to their understanding. He considered the case at bar with them, viewed it from their standpoint; and he "dexterously accommodated himself to what he detected to be the passing mood of each of the twelve," leading them instead of driving them to their conclusions.

One of the most powerful weapons which an advocate can use is candor. This was possessed by Mr. Hill, and it was, indeed, formidable in his hands. Without any parade of learning, he convinced the judges that he had examined every phase of the question he was arguing, and was, therefore, capable of enlightening their minds, and aiding them in their deliberations; hence, he was strong at *nisi prius*, still stronger before the court in banc.

His habits of life were regular and frugal, the only excess in which he indulged being his intense, never ceasing application to his books, the study of his cases and his briefs.

At length the physical powers of Mr. Hill, which were never strong, began to yield to constant and unrelaxed labors; with the flight of each week this became more and more apparent, until finally his friends persuaded him to suspend his professional toils. He yielded to their advice, and they soon had the satisfaction of seeing his bodily strength and vigor return, and his energies revive; thus he continued for several weeks, until he believed himself able to resume his usual duties. But alas, even at the moment when hope was highest with the prospect of returning health, he suddenly fell before the destroyer, and Nicholas Hill was numbered with the dead. This sad event occurred on the first day of

May, 1859. He was then in the fifty-fourth year of his age—at that period when the intellect is strongest and ripest, when he yet had years of activity, labor, and usefulness before him.

The intelligence of his death produced the most profound sorrow throughout the State, particularly among the members of the legal profession. When it was announced in the Court of Appeals, in that arena where he had so long been a prominent contestant, where he had occupied a place since the organization of the court, a scene of sorrow unequalled on such occasions and in such places followed.

Honorable John H. Reynolds, his law partner, who knew him, perhaps, better than any other person, and to whom he was tenderly attached, arose to pay a tribute of respect to his memory. For a time the emotions of the speaker overcame him, his voice faltered, and his tears flowed. The bench and bar were no less affected. Grave judges, strong and gifted lawyers wept, and in the temple of justice grief prevailed. At length, gaining sufficient composure to proceed, Mr. Reynolds pronounced the following beautiful, appropriate, and affecting memorial.

“If your Honors please—Since the last meeting of this court, one who has been accustomed to welcome your return has suddenly been called away. His place at this bar is vacant, and will be filled by him no more forever. While yet busy in the great labors of his life, and in the very fullness of his intellectual stature, Nicholas Hill has unexpectedly left the employments of earth, and entered upon the realities of another life. His departure from among us was so sudden, that those who were most intimately associated with his daily avocations, were scarcely made aware of his illness before the sad intelligence of his death was announced. An event so mournful could not fail to arrest public attention, and spread universal sorrow over the hearts of all who knew and honored him. To none beyond his immediate family circle,



did this great bereavement seem more near than to his brethren at the capital, who were the immediate associates of his professional life, and who were bound to him by the nearer relations of friendship and affection. To give expression to these feelings of respect and regard for his character and sorrow for his death, they assembled together with mournful feelings, and adopted resolutions expressing in some slight degree their esteem for his worth, their admiration for his great character as a lawyer, and their regret for his sudden and untimely death. They gathered in reverent grief around his bier, and followed to its last resting place in silence and tears, all that remained on earth of one so loved and honored. They desire to preserve some memorial of their regard for what he was, and I now present the record of their proceedings, with a request that in respect to his memory, they be entered upon the minutes of this court. It was in this place that he spent the later years of his life, and it is upon your records that the most enduring monuments of his labors exist; and we feel it to be appropriate that upon the field of his professional fame, there shall remain a fitting testimonial to his great character. The last effort of his professional life was made in this presence. It terminated the labors of the last term of this honorable court, and with him it was the close of a career that will be looked to as an example of all that can be achieved by a lofty intellect and unremitting labor. It was also the termination of a life crowded with all that is estimable in human character. I was with him as an adversary in his last public labor in the profession that he loved, and honored, and adorned. I was with him as a friend in almost the last hours that he spent in this life, and I come here to day to bring the tribute of his brethren to his exalted worth, and to add my own feeble expression of admiration for him as a lawyer, my reverence for his character as a man, and my affection for a lost associate and friend.



“It is not necessary in the presence of this court, to dwell upon the great qualities that formed the character of our lamented brother. You well know the measure of his luminous intellect, and the noble qualities of his great nature. You have been delighted and instructed with his eloquence and learning. Every volume that records your Honors’ judgments bears enduring evidence of the labors of Nicholas Hill. No man at this bar ever spent more time in valuable discussion, and none ever brought to the consideration of any question a greater amount of exact legal learning, or presented in a more attractive and impressive form the severer logic of the law. He never undertook the discussion of any question that he had not fully investigated, and of which he had not by attentive study and reflection made himself the master. The leading thought of his life was his profession. He loved its labors with enthusiastic devotion. No temptation could seduce him from its pursuit. If he relaxed his severer studies, it was to beguile an hour in the freedom of social enjoyment, or amid the delights of literature. His was a life of intellectual toil and of intellectual triumph. He was indebted to no adventitious aid for the honors that he won. They are the results of his own unaided intellect and of his own unparalleled industry. The reverence that we all feel for his great character is but the just tribute to exalted merit.

“His whole life was devoted to the loftiest of human pursuits.

“The administration of justice presents the noblest field for the exercise of human capacity. It forms, as has been well said, the ligament which binds society together. Upon its broad foundation is erected the edifice of public liberty. To lend humble aid in raising this structure is a valued privilege, but to stand pre-eminent among those who at the bar or upon the bench have beautified and adorned the temple of justice, is among the loftiest positions allotted to man.

From that proud eminence in the early morning of May Nicholas Hill descended to the tomb—closing a spotless life in the full maturity of his power, in all the warmth of his affections, and while yet the sun of his existence seemed at noonday. By those who value truth and honor manhood, who reverence intellect, and love all that is generous and noble in human character, his memory will be cherished as among the most precious recollections of life, and by the purest and greatest of those who survive him, his example may be viewed with profit; and it will be well with any, who at the close of life are worthy to fill a grave such as received all that was mortal of Nicholas Hill.

“By most all of those with whom the name of our departed brother was familiar, he will be remembered only as a great lawyer. To some of us he will be cherished in a nearer and kindlier relation. Those he honored with his regard will prefer to think of him as he was when he withdrew from labor and surrendered himself to the enjoyments of the hour. They will not forget his genial and generous nature, his graceful humor, the warmth of his friendship, and the thousand nameless qualities that made up the perfection of his character. Those who knew him only as the acknowledged leader of an honored profession, knew but little of the man. It was when, in the chosen circle of his friends, he left behind him his books and his briefs, that you were made acquainted with the excellent qualities of his heart. To those who knew him not, he may sometimes have seemed austere and distant, but to those he knew and loved, he was ‘sweet as summer.’ I prefer to cherish him as a valued friend, who has too early left us for an undiscovered country. I shall long remember our last interview on the last day of his life. Disease had laid its heavy hand upon him, but his mind was clear, and the energy and warmth of his affections had suffered no abatement. He felt con-

scious that he had been overtaken, and, I think, regretted that he had subjected his frail organization to such unremitting and exhausting toil. But he looked forward to the return of health, and to a season of repose; and yet there was a lingering doubt in his own mind, if that day would ever come. Alas! it never came. Within a few hours he passed from sleep to death, and there remains of him but the record of his toils and triumphs, and the memory of what he was. He died in the meridian of manhood, a victim to his own ceaseless devotion to the profession that now mourns his loss.

“ So the struck eagle stretched upon the plain,  
No more through rolling clouds to soar again,  
Viewed his own feather in the fatal dart,  
That winged the shaft which quivered in his heart.”

“ However distinguished we may be or have been in this life, upon the bed of death man returns to his individuality. He must die unaided and unsupported by human effort. Neither the applause of his fellow men nor the affection of friends and kindred can support him in that hour. All the honors of earth are then as valueless to the possessor as the withered leaves which the winds of autumn will scatter over his grave. Those who sit in the judgment seat and dispense human justice will in their turn bow to that fixed and unalterable law of being, which dedicates all that is mortal to decay and death. In view of that solemn hour, the impressive lesson of the life and death of him we mourn will not pass unheeded. It comes too near us to be viewed with unconcern. I need not pause to impress it upon the attention of those who but yesterday looked into the new made grave of him, who, according to the standard of human judgment was entitled to “crown a life of labor with an age of ease;” but to whom, in the mysterious Providence of God, it was not permitted to find rest

from his labors, except amid the habitations of the dead.

“In that silent resting place, we leave him to the rewards which are promised to the pure in spirit, the blameless in life, and the upright in heart.”

## DANIEL LORD.

His name intimately associated with the Bar of the State.—Lord Brougham's description of Percival applies to Mr. Lord.—Mr. Lord as a Counselor and Advocate.—His Birth.—A Son of Dr. Daniel Lord.—Character of Dr. Lord.—His Heroic Conduct During the Prevalence of the Yellow Fever in New York, in 1798.—The Early Home of Daniel Lord.—His love for it.—Daniel Prepares for College.—Studies the French Language.—His love of that Language continued through Life.—Continues to Read French Authors.—Describes Voltaire in a Letter to a Friend.—Enters Yale College.—Dr. Dwight.—The Books which Mr. Lord Read while in College.—His Love of the Bible.—Pleasing Incident on Board of a Steamboat.—Mr. Lord Believed to be a Distinguished Clergyman.—How the Mistake was Discovered.—A Pious Lawyer Found.—Mr. Lord Decides to Enter the Legal Profession.—Enters the Office of George Griffin as a Student.—Description of Mr. Griffin.—The Great Trial of the People *v.* Goodwin.—Mr. Griffin's Great Speech.—Scene at the Trial.—Mr. Lord Admitted to the Bar.—His Marriage.—His Discouraging Prospects as a Lawyer.—Prosperity Slowly Commences.—Death of a favorite Child.—Its Effect on Mr. Lord.—Mr. Lord Continues his Struggles to Gain a Foothold in the Profession.—Mr. Lord and Charles O'Connor.—Anecdote Related by Mr. O'Connor.—Mr. Lord at last Gains a High Reputation in the City Courts.—His First Case in the Supreme Court.—Mr. Lord as a Chancery Lawyer.—The Case of Grover *v.* Wakeman.—Argues it against Abraham Van Vechten and William H. Seward.—Lord Succeeds.—Case Appealed to Court of Errors.—Mr. Lord argues it in that Court against Samuel A. Talcott and Benjamin F. Butler.—Talcott and Butler described.—Mr. Lord again Succeeds.—Result of his Success.—Important Cases in which he was Engaged, described.—Mr. Lord's Love of Literature.—Mr. Evarts a Student in his Office.—Anecdote of Mr. Evarts.—Mr. Lord's Habits.—His Domestic and Religious Character.—He unites with the Brick Church in New York.—Remark of Rev. J. O. Murray.—Mr. Lord Threatened with Paralysis.—Fears of his Family.—Touching Scene in his Family Devotion.—The Dreaded Hour.—Scene of his Death.

No name is more intimately associated with the bar of the State of New York than that of Daniel Lord—no name calls up more pleasing recollections than his; for in him were blended those qualities which are admired by the man of business, the scholar, the lawyer, the judge, and all who venerate virtue, religion, and talent.

As Lord Brougham said of Percival, "He was a warm and steady friend, a man of the strictest integ-



rity and nicest sense, both of honor and justice, in all the relations of society wholly without a stain—though envy might find whereon to perch, malice itself, even in the exasperating collisions of the bar, never could descry a spot on which to fasten.”

As a counselor and advocate, his characteristic features were strength and originality of thought. His intellectual efforts brought with them, both in form and style, the stamp of his own mind and of mental independence. His mind was a well arranged legal library, where he could easily lay his hand upon whatever he desired. He was always strong before a jury, and in cases which called out all his faculties, he was eloquent, often impressive, occasionally ardent, though his ardor was rather the offspring of strong reason than the flow of imagination—the result of a strong prepossession of the justice of his case, than the power of sentiment or of ideality.

He made no claim to the external graces of the orator—no parade of learning. He did not enter any field of argument in the glittering panoply of science and erudition, wielding at pleasure all its arms; but like Hercules with his club, he used a single massive weapon familiar to his hand, smoothed and polished by frequent use, and that was the law. He entered the legal profession in the glow of youthful ambition, gradually winning his way to its highest honors,—in the meridian of his life a chieftain; in its decline a veteran—a champion with his armor on, still braced for the contest—moving triumphantly over that field of strife which he never abandoned for political distinction or the emoluments of office.

He was born at Stonington, Connecticut, on the second day of September, 1795. He was an only child of Dr. Daniel Lord, a physician of respectable attainments, but a man little calculated for the rough contacts and hard struggles of life. Dreamy and scholastic in his nature, with a book ever before him, he would forget his trials in the beautiful creations of

the poet—in the realms of science, or in the scenes presented by the historian, where monarchs, heroes, and martyrs are actors; and, therefore, though he acquired a competence, he never amassed riches.

In the year 1797, Doctor Lord removed to the city of New York, where he entered into a practice which promised to be lucrative; but at a period when his professional success began to have the appearance of certainty, he relinquished it, strange as it may seem, after having won public commendation for his heroic devotion to the sick during the prevalence of the yellow fever which raged so fearfully in New York in the year 1798.

The first victim of that appalling scourge was attacked on the 29th day of July, and died after a very short illness. Though his case was attended by most malignant symptoms, such was the healthiness of the city at the time, that his death excited no alarm. The deceased was a merchant whose store was in Front-street near Coenties-slip, and it was believed he was taken ill at his store. A few days after his death, several persons in that locality were attacked with the same sickness; but as their symptoms resembled a common cold, they did not regard the matter serious enough to call a physician. When at length medical aid was sought, they learned to their horror that they were suffering with the yellow fever, and beyond recovery. In a short time the disease spread to New-slip, Cliff-street, John-street, and other parts of the city; in some places not a family escaped its ravage; death, terror and misery reigned on every side. For a time it seemed as though the death angel was hovering over the city, and many fled from it as from the caverns of destruction.

At first, funeral processions followed one another in rapid succession; but at length this respect for the dead was abandoned, and they were hurried to the grave in carts and drays, with no ceremony whatever.

Many of the physicians in the city, actuated by the love of life, fled to places of safety: in the course of time many others were stricken down by the disease, leaving scarcely enough of the medical fraternity to attend to the sufferers.

Amid this pestilence, which indeed *walked in darkness*, Doctor Lord devoted himself to its victims with unwearied energy and calm fortitude. In the homes of the wealthy, in the abodes of poverty, by night and by day, he was constantly at the side of the suffering and dying. Around him flew the invisible arrows of death. Still he adhered inflexibly to his duty, bravely continuing at his post. With scientific observation he watched the effect of his prescriptions, carefully noting every phase of the disease; like a skillful general, valiantly resisting the attacks of his enemies, and preparing to repulse new onsets. He thus learned the nature of the disease and the mode of treating it,—and this knowledge subsequently became of immense value to his professional brethren.

At length the pestilence passed away, health and prosperity returned to the city, and Doctor Lord retired from the duties of his profession and engaged in the occupation of a druggist.

Mr. Lord's mother was a superior woman, who exerted an excellent influence over him, and he ever regarded her with affection and veneration.

For a time, the business affairs of Dr. Lord progressed favorably. His business, though not extensive, was sufficiently remunerative to enable him to educate his son, while it furnished him a respectable livelihood. But in the decline of his life, pecuniary difficulties overtook him, which swept away nearly all his property. Fortunately for him, his son, long before this, had entered the battle of life, and if his advance had not been brilliant, it was sure and certain; he had already won a competence, and he prepared a home for his aged parents, where,

through the remainder of their days, they were surrounded by every comfort, and their last years rendered happy. Dr. Lord died in 1845, and his wife survived him two years. If there was no other record of Daniel Lord than that of his filial devotion, his name would attract attention and respect.

When Dr. Lord removed to New York, he purchased a house which was situated on the corner of Old-slip and Water-street; here he continued to live until it was destroyed by the great fire of 1835. This was the home of Daniel during his youthful days. Although unpretending, it was attractive and respectable. From the active scenes of life, from the triumphs of his professional career, Daniel Lord often looked back to this home of his childhood with inexpressible emotions, born of a lively remembrance. How beautiful are the associations which bring such reflections to the mind; when the heart, "lone mourner of its baffled zeal," is calloused by ambition, avarice, pride—when, tired with tumult—baffled in hope—beaten by the storms of life, through many a vanished year they flash upon us as a dream of what we were, and carry us back to the scenes of our early days of innocence.

At an early age Daniel was placed in one of the best schools in the city, where he prepared for college. At this institution he gained a knowledge of the French language, which he never lost. Indeed, in the last years of his life he derived great enjoyment from French authors, particularly the tragedies and lively tales of Marmontel.

In a letter to a literary friend, with whom he occasionally corresponded, he speaks of Voltaire as follows:

"The first name in French literature, during the period through which the Marmontel Memoirs extend, was unquestionably that of Voltaire; and they contain a considerable number of anecdotes relating to him. The impression which I have formed of him



from these is not unfavorable. He is represented to be more friendly and more genial than I had supposed—full of vivacity and impatience, to a degree of childishness and folly; extremely changeable in his humor; vain, satirical and ambitious, without modesty and without measure; but he was a gifted and powerful writer. Had it not been for his abominable skepticism, his name would have been much brighter in history; but, as an eminent modern writer has said of him, ‘he had nothing of Mephistophiles in him. His fault was, that he was too humane; that is, too weak and too unsteady. Besides, we must remember, that in opposing religious opinion he was opposing the opinion of Monks and Jesuits. Fanaticism discontented him with Christianity. Observe the difference with which he speaks of the Protestant faith—with what gravity and respect. Had he been in England, I doubt if Voltaire had ever attacked Christianity. Had he been born two centuries before, I doubt whether his spirit of research and his daring courage would not have made him the reformer of the church, and not its antagonist.’ ”

It would indeed be difficult to obtain a better insight into the character of Voltaire than is here given. It is a strong mental portrait, drawn by a master’s hand.

In the year 1811 Mr. Lord entered the sophomore class at Yale College, under the charge of Dr. Timothy Dwight, who, as has well been said, “possessed by nature one of the highest orders of mind—a mind in which the faculties were all great and all in harmonious proportions, forming a fine example of a well-balanced mind.” A warm and agreeable friendship commenced between young Lord and Dr. Dwight soon after the former entered college. The influence which the doctor had upon him was manifested in many of the features of Mr. Lord’s character—first in the college student, and then in the lawyer and citizen.

That he gained the firm friendship of Dr. Dwight,



is a sufficient guarantee of his success and abilities as a student; for, as the doctor himself was the impersonation of industry, he admired that quality in others, and had no patience with indolent students.

“I can tolerate a dull student,” said he, “because that is a misfortune—an imperfection in organization—but indolence is a vice engendered by habit, and therefore I cannot endure it.”

Among the works Daniel read in college, were Campbell's Rhetoric, Paley's Theology, Gibbon's Roman Empire, Chastelleaux's Travels, Hume's History of England, with a little of Moore's and Falconer's poetry, the Spectator, and the Vicar of Wakefield. The latter was always a favorite with him. He was serious, reflective and sincere, possessing great veneration for religion, though then not an avowed professor. The Bible with him was always a favorite book. He was delighted with the delicacy of sentiment, the felicity of allusion and the force contained in the Psalms, and he regarded sublimity as a characteristic feature of Hebrew poetry, heightened by the splendor and magnificence of their sacred rites and their symbols of faith.

In the summer of 1845 the Rev. J. M. Sprague, a respectable clergyman who then resided in Buffalo, being in New York, took passage for Albany on one of the splendid steamers plying between the two cities. As soon as the boat was well under way, a party of young people on board prepared for a dance, and in a few moments “music arose with its voluptuous swell,” and the dance commenced.

Mr. Sprague not being particularly interested in the amusement, turned away, with the hope of meeting some person whose taste would be more congenial with his own. The saloons and cabins were filled with gay and happy people, some of whom were engaged in lively, cheerful conversation, while many were deeply absorbed over games of cards. For some time

he wandered about the boat, finding no one whose acquaintance he desired to make.

At length he discovered a gentleman seated at a table in one of the cabins, engaged in reading a Bible which belonged to the boat ; his black broadcloth suit, his grave, thoughtful and intelligent face, convinced Mr. Sprague that he was a clergyman. Accordingly, he seated himself a short distance from him, took a paper out of his pocket, and began to read, determined to make the stranger's acquaintance when he closed the book.

The latter continued to read for some time, occasionally making a note in a small blank book which lay on the table before him. At length he ceased reading, and taking a small piece of paper, placed it between the pages on which he had been engaged, closed the book, and walked to the other end of the cabin.

Curiosity impelled Mr. Sprague to examine the pages thus marked, and opening the Bible, he found the mark between the thirtieth and thirty-first chapters of Deuteronomy, in which Moses as a speaker addresses the children of Israel in a solemn and interesting oration, exhorting them by the most inviting promises to the observance of the covenant, and dissuading them from the violation of it, by threats of the most exemplary punishment ; and for the purpose of impressing the same more forcibly on their minds, he afterwards embellishes the subject with the elegance of a poem which bears every mark of divine inspiration. The clergyman discovered several verses in these chapters marked with a pencil, among which were the first three verses of the thirty-second chapter, beginning with the words : "Give ear, O ye heavens, and I will speak ; and hear, O earth, the words of my mouth."

After some time the gentleman returned, and as he took his seat, Mr. Sprague courteously addressed him. As he was pleasant, urbane, and intelligent, an agreeable conversation commenced, which was natu-

rally connected with religious subjects and the Bible. The clergyman was delighted with his new acquaintance, and thoroughly believing him to be an eminent minister of the Gospel, was determined to ascertain who he was and where he was engaged in preaching; but before politeness would permit him to make the inquiry, the gentleman was called to another part of the boat, and he did not see him again that evening nor during the passage.

Mr. Sprague was detained at Albany the next day, and, having some leisure time, he visited the Court of Errors, which was then in session at the capitol. On seating himself in the Senate chamber where the court was sitting, to his surprise he discovered among the lawyers in the bar, the minister of the Gospel with whom he was so interested on the evening previous; but, supposing he had been invited to a seat there by some one of the lawyers present, he thought no more of the matter, until, to his utter astonishment, his clerical friend arose to address the court. As he proceeded, the court, bar, and spectators listened with the most profound attention. Mr. Sprague soon ascertained from his language that he was arguing a case of great importance.

“Am I mistaken?” thought the minister. “Is it possible that he is a lawyer? He did not talk nor act like one last evening.”

After some time the speaker closed and took his seat. Mr. Sprague could control his curiosity no longer, and approaching the sergent-at-arms who stood near to him, said:

“May I ask you who that gentleman is that has just closed his speech?”

“Certainly, sir; that is Daniel Lord, of New York.”

“Daniel Lord! is it possible? Why, I have heard of him often. I came up from New York with him on the boat last night, and took him for a clergyman.”

“Well, sir, you were mistaken that time, though

he's a good enough man to be a minister. He is one of the best lawyers that come here, and what is more, he's an honest lawyer, sir, and the judges all believe him," said the sergeant.

"I thank you, sir, for your information, and I am happy to know that there is now and then a pious lawyer," said Mr. Sprague, and he turned from the officer to leave the Senate chamber.

In 1814, Mr. Lord graduated with distinction, standing second in his class.

Having decided to enter the legal profession, immediately on leaving college he commenced his legal studies in the law school at Litchfield, Connecticut, in which Judge Gould was then the principal instructor. He continued at this institution one year, engaged in studying the elementary principles of law, when he returned to New York and entered the office of the late George Griffin, who, for many years, was one of the great lights of the New York State bar, the associate of Thomas Addis Emmet, David B. Ogden, Josiah Ogden Hoffman, Wells, Blake, and other eminent lawyers, whose remarkable intellectual powers were often displayed in the highest courts of the State and nation. The trial of Goodwin for killing James Stoughton was one of the occasions on which Mr. Griffin's forensic eloquence shone forth with peculiar splendor. This case was tried at New York in 1820, before the late Cadwallader D. Colden, then mayor of the city.

Both Goodwin and Stoughton were young gentlemen who belonged to the most distinguished families in the city. A quarrel having taken place between them, they continued bitter enemies for a long time. On the nineteenth day of December, 1819, they met on the corner of Broadway and Courtlandt-street. A conflict ensued between them, in which young Stoughton was stabbed to the heart, and fell dead upon the walk. Goodwin was brought to trial for the crime, and an imposing array of eminent counsel ap-

peared for both the prosecution and the defense. Mr. Griffin was the leading counsel for the people; he was ably sustained by Messrs. Wells and Van Wyck. J. O. Hoffman, T. A. Emmet, S. Price, J. A. Hamilton and Mr. Munroe, were opposing counsel.

It was a case of all-absorbing interest in the city, occupying an entire week. Mr. Griffin's address to the jury was without doubt one of the great legal speeches which have rendered the New York city bar so distinguished before the nation. He closed his speech in the following language :

“The syren voice of pity has been sounded in your ears in behalf of the prisoner's youth, and you have been invoked as you value your own salvation to temper justice with mercy. Mercy is indeed a heavenly attribute—it is the very attribute of the Godhead to which erring mortals will cling in that day of retribution when we must all appear before the judgment seat, not as judges, or jurors, or counsel, but to await our final sentence. Nor is this favorite of the skies a stranger to our jurisprudence. Our Constitution has provided a place for it to dwell, even the mercy seat of the executive. But jurors may not, must not tamper with it; an oath enjoins them to forbear. It is chiefly because the law knows that jurors have compassionate and erring hearts that it fortifies them by an oath; compelling them to lay their hands upon the word of life, and to call upon God to help them, or not to help them, as they decide according to the law and evidence. Awful alternative, cleaving unto or renouncing *the help of God!* And yet, gentlemen, this oath, with all its sanctions, rests upon your souls.”

After an able charge from the mayor, the jury retired, and at length returned into court with a verdict of guilty. Mr. Hoffman in behalf of the prisoner prayed that the jury might be polled; accordingly they were requested to pronounce their verdict separately as their names were called. Slowly the clerk



commenced calling the jurors by name, and all answered "guilty," until the fifth juror's name was called, who, after some hesitation, answered "not guilty." "That is sufficient," said Mr. Hoffman, with a look of triumph, and the prisoner, who until that moment had remained standing, sank into his chair, overpowered by his emotions. The jury retired for further deliberation, but they failed to agree, and on a second trial Goodwin was acquitted.

It will thus be observed that the legal preceptor of Mr. Lord was well calculated by his example, as well as his teachings, to inspire his student with that professional ambition, and to impart to him that knowledge which is so necessary for a successful career at the bar.

As was said of Ogden Hoffman, Mr. Lord's legal education was laid in a thorough knowledge of great elemental principles. He was a close practical student, letting no question or subject pass until he understood it as thoroughly as his powers would enable him, always seizing the moment of excited curiosity on a subject, to solve his doubts, knowing that if he let it pass, desire to learn it might never return, and hence he would remain in ignorance. This was his habit through his whole professional life; he always adhered strictly to Franklin's practice of ex-cogitation even to his latest hour.

In October, 1817, he was called to the bar, and from that time until two or three years before his death, when premonitions of disease compelled him to relax his labors, his life was entirely devoted to his profession.

"On May 16th, 1818, he was married to Susan, second daughter of the late Mr. Lockwood De Forest, of New York, for whom he had formed an attachment early in his college course. He, therefore, entered upon his life's career surrounded with all the great responsibilities, yet supported by all the still greater encouragements of married life. The path that lay

before him seemed both rugged and uncertain. He had chosen a profession which, though it accorded entirely with his taste, was one requiring immense exertions to secure success, and in which others could help him but little, if at all. Besides all this, his own circumstances, as well as those of his father, were such as would not admit of much waiting for fortune. He was already committed to the issues of life. The future of those he loved depended upon him, and the consequences of failure would be very serious. But he gathered up his courage, and recognizing fully his exact position, shaped his course accordingly. Gladly availing himself of his father's offer of a home with him, he brought his newly-married wife to the family dwelling. At first his practice was not sufficiently lucrative to enable him to contribute much toward the common support, but as his business increased, he gladly assumed half the burden of the family expenses, which were very moderate. He remained thus situated for many years, when his own increasing family made it necessary for him to seek an independent home for himself. After mature reflection upon the propriety of making such a hazardous experiment, and after many a calculation of the cost, he hired a small house in Laight-street, near Canal, and moved into it with his family, which then included three children. This was in 1825." While residing in this house, he was called upon to part with a lovely little boy, who was to his parents a ray of sunlight shining upon their pathway. He was with them but a year, and then amid the sober beauties of declining autumn, he left them; heaven took the treasured little one, but his removal was a heavy blow to them, particularly to Mr. Lord. For a long time

" Grief filled the room up of his absent child,  
Laid in his bed, walked up and down with him;  
Put on his pretty look, repeated all his words,  
Remembered him of all his gracious parts,  
Stuffed out his vacant garments with his form."

How many there are who can sympathize with Mr. Lord in that silent sorrow which was so long a tenant of his heart; who, like him, mourn some loved one of the past, some bud of promise, some cherub child, that in the earlier scenes of his manhood he clasped to his breast as the idol of his life, then left him for an early grave, but still lives in his heart of hearts, bright, beautiful, and loving, as when in the cradle,

“ He looked on him and smiled.”

Though such mourners move in the world like other men, suffering no pause in their career, “courting business—pleasures—letters—ambition; discharging life’s duties, fostering its affections, fulfilling its career, yet over their hearts a wintry change has passed, the sunlight of their life is shadowed. Though the stem, as heretofore, may be proof to the blast, yet the green leaves have been severed from it forever, and the bird has forsaken its boughs.”

An eminent English jurist has remarked that a lawyer can scarcely hope to begin a career of substantial prosperity until after he is thirty years of age. No lawyer could more fully appreciate this remark than Mr. Lord. As was said of Mr. Burke, he was born to no expectancy but what depended upon himself; to deserve eminence seemed the only way to obtain it. The mediocrity of his beginning saved him from a premature trial of his strength. His youth was a protracted season of preparation, neither immersed in business, nor lost in abstractions; devoutly seeking for the learning of his profession, and full of sober, serious purposes of utility, and inspired by a determination to succeed. The world lay before him in all its glittering possibilities, but it presented to him no prospect of success, except through his own unaided exertions. He had no part in its allotments. His ability and industry were his only titles. Honor and dignity to him were matters not of claim but of

achievement; difficulty was his severe instructor, for it called all the dormant powers of his mind into operative existence.

Among the many distinguished cotemporaries of Mr. Lord who still survive him, is Mr. O'Connor, whose acquaintance with him began at an early period in life; and though they were often opposed to each other in the contests of the forum, yet it was a generous, high-toned rivalry, which had in it the attraction of example, because, by the conspicuous success of one gifted and powerful mind, congenial abilities are prompted to action. Thus the success of men like Brady, Noyes, and Hoffman, was the nurse of capacity in others with whom they came in contact, which but for their example, might never have reached its maturity. From the abundance of one mind others are made prolific.

To use the language of Mr. O'Connor, "Daniel Lord was an extremely modest man, and though he had many facilities for so doing, if inclined, he did not at the outset, become at once engaged in very active practice. During the few years that intervened between his admission to the bar and my own, he was not very extensively engaged in contested causes; and whenever we were called into the same case, during nearly forty years of my professional life, it almost invariably happened that we were placed on opposite sides. I found him an exceedingly formidable contestant. Nothing that diligence could discover, no agency that truth and honor could employ, ever failed to present itself upon his side. There was something remarkable in his laborious fidelity to his clients. I remember during the first or second year of my professional life, being engaged to prosecute a wealthy merchant for a humble mechanic. It was in a justice's court, and the sum in controversy was five-and-twenty dollars. The merchant would probably have paid thrice the sum, rather than enter upon the contest; but pride often governs in these matters; he



determined to resist, and the merchant's favorite of that day, Mr. Lord, was his chosen counsel. The six-men jury assigned by law to such cases witnessed our mutual efforts for a whole day; and I can confidently affirm, that Mr. Lord as earnestly and diligently devoted himself to the trial of that case as he ever applied himself to any similar duty, when ten thousand times as many dollars depended upon his exertions. Greater zeal, more unwearied efforts, more absolute ability, so far as the case called for it, were not exhibited in his greatest cases, than in that very small one.

“Amid the haste and excitement of the bar, the best regulated tempers will sometimes fail to preserve their equanimity. Though the instances were rare indeed, yet truth requires the admission that, occasionally, while Mr. Lord and myself were contestants at the bar, words have been elicited from each of us which might not seem to have been conceived in entire kindness, and which were not at the moment accepted with perfect amenity. Yet I firmly believe that there never existed on his part, during the long period marked by our intellectual combats the slightest rancor. I know upon mine, there never were any feelings but those of the most cordial and respectful nature. It has been said that Mr. Lord was a sincere Christian. His course in this branch of our mutual experience and intercourse afforded a strong proof of it. I perfectly remember an occasion after we had been for fifteen or twenty years contending at the bar, when contemplatively viewing the past, I recalled the fact that every sharp passage between us had been promptly reconciled by a generous advance on his part. Considering that he was full ten years my senior, and that, doubtless, I was not unfrequently the offender, this reminiscence very justly excited emotions akin to self-reproach. It imparted additional depth and earnestness to my habitual respect for him.”



Slow and discouraging as was his progress during the earlier years of his practice, his "habits of application coupled with the mental and moral powers which he possessed, at length brought their appropriate rewards. Success in the conduct of those unimportant litigations which fall to the lot of a young lawyer, procured him new clients whom his personal qualities soon converted into friends, and, his abilities proving equal to each larger trust that was committed to him, he gradually worked his way to the front rank of his profession, at a time when the bar of New York was made illustrious by the presence of men whose names will ever be conspicuous in the history of American jurisprudence."

Though he gained a high position in the city courts and in those of the counties adjoining, it was not until the year 1826 that he appeared in the Supreme Court at General Term, and some years more elapsed before he was heard in the Court for the Correction of Errors.

He had been at the bar but a short time before he began to attract attention as an equity lawyer. The earliest important cases which he conducted were in the Court of Chancery. Among these were the cases of *Wakeman v. Grover*, *The Fulton Bank v. The New York and Sharon Canal Company*, *Dickerson v. Tillingast* and others.

*Wakeman v. Grover* is a leading case—one that first settled the doctrine of voluntary assignments in trust. *Grover & Gunn*, in 1827, were among the heaviest mercantile firms in western New York, being engaged in business at Auburn. In the spring of 1828, they failed in business, owing a large sum of money to *Wakeman and Varnum*, who were the principals in two of the heaviest jobbing houses then in the city of New York.

As the Auburn merchants were on the point of failing, they executed a deed of assignment of their goods on hand, their debts, credits, and other prop-

erty, specified in a schedule attached to the conveyance, to three individuals at Auburn, upon trust. Among the usual conditions and provisions of such instruments, there was a clause making a preference to certain creditors in the distribution of the assigned property, to depend upon the execution by them, of a release to the debtors of all claims against them.

This conveyance was drawn by William H. Seward, then a young lawyer of a few years' practice, but who had already attained considerable professional reputation.

When intelligence of the failure of Grover & Gunn reached New York, their creditors there, believing the whole transaction fraudulent, determined to make an effort to have it so declared by the courts. Accordingly, Wakeman placed his case in the hands of Mr. Lord, directing him to thoroughly investigate the whole matter; and then, if he thought it advisable, to commence proceedings to set aside the assignment.

Even at that early period the New York merchants suffered severely from the fraudulent failure of the country dealers. This transaction was soon known to all the city jobbers; and Mr. Lord saw at once the vast importance of the case, not only to his own client, but to the city merchants generally. To himself, however, the matter was of paramount concern. To succeed in a case of this nature would have an inestimable influence upon his professional life.

He therefore studied the case deeply and thoroughly. Many of the questions in it were new. He carefully examined all the authorities bearing upon the matter, comparing and contrasting them with each other with the nicest discrimination. At length he satisfied himself that the assignment was fraudulent and void; and as soon as preliminary proceedings would admit, an action in chancery was commenced by Mr. Lord to set it aside.

In the action brought by Varnum for similar relief, John L. Graham appeared for the complainant.

The defendants answered the bill of the complainants, denying all fraud in the assignment, unless it was illegal on its face; and they insisted that it was not. Mr. Seward and the late Abraham Van Vechten appeared for the defendants. Mr. Van Vechten was then one of the ablest, if not the ablest, lawyer in the State.

At length the case came before the chancellor for argument. It was an important event in the history of Mr. Lord. On his advice his client had entered into this great litigation. The attention of the legal as well as the mercantile world was directed to it. But he was thoroughly prepared. He had the aid and sympathy of Mr. Graham, who was an accomplished and thorough lawyer. Perhaps no more finished and learned briefs were ever presented to a court of equity than were those presented by Messrs. Lord and Graham. That these arguments were clear, able and convincing, is attested by the result; for the chancellor held with them, and declared the assignment void, principally on the ground that it contained a clause excluding those creditors who should not come in within a limited time and give their debtors a general discharge; and also on another, which authorized the assignees to compound with all or any of the creditors, in such manner and upon such terms as they should deem proper, &c.

The defendants, not satisfied with the decision of the chancellor, appealed to the Court for the Correction of Errors, where, in the winter of 1834, it was argued.

Mr. Lord again appeared in opposition to the assignment. This was one of the first cases of importance, if not the very first, which he conducted in that high tribunal. Here he was compelled to contend against those giants of the bar, Samuel A. Talcott and Benjamin F. Butler. The first was, in every sense of the word, a great lawyer, "who was overpowering in the weight of his intellect—who produced in the minds

of his audience all the sympathy and emotion of which the mind is capable—all which the argumentative can produce on the hearer—all which solidity, pathos or splendor, whether derived from original or assisted powers—could convey, of pleasure or conviction to the heart or understanding;” while the second possessed those powers and attainments, which, at the bar of any court—from those of the State up to the highest Federal tribunal—rendered him strong and effectual.

To enter the contest against such men was indeed a severe though profitable test of Mr. Lord’s abilities. His argument was plain and unassuming, but a model of force and precision. He examined, with learned scrutiny, whatever could by any possibility affect his case. He was full of his subject. He saw it in all of its bearings—felt all of its strength; knew all of its weakness. He was strongly and ably sustained by Samuel A. Foote, one of the ablest and oldest members of the bar in the State. Mr. Foote first appeared in the Supreme Court in the year 1816. His name constantly appears in the legal reports of the State from that time down to the present day, and he has been honored by a seat on the bench of the Court of Appeals.

It was the good fortune of Mr. Lord to win the victory in this great contest. It was a triumph which brought to him results of inestimable value. He had now successfully measured weapons with the ablest advocates in the State, and from that time until he retired from his profession, he continued to be the favorite lawyer of the New York merchants.

While it is not pretended that the case of *Wakeman v. Grover* was in every sense the most important case which Mr. Lord successfully conducted, it cannot be denied that, considering the influence which it had upon his professional career, it was to him of surpassing moment.

Among the earlier cases in which Mr. Lord was



engaged were the celebrated fire causes, in which many new questions were involved, and great pecuniary interests were at stake. These he conducted successfully. Soon after these were disposed of, the Dutch Church case was intrusted to him.

As was remarked by Mr. Evarts after the death of Mr. Lord: "If we recall, as I have been led to do, by a somewhat hasty glance, the series of causes of the most excitable character, which in the Federal or State courts had engaged the attention of Mr. Lord, we shall see how large an area they covered, and how extensive a number of the most important professional employments came year by year, step by step, to be under his charge." After stating the cases which have before been alluded to, he continues, "The American Life and Trust cases, containing in so many forms questions of usury, and of corporate action, arising in the transactions of that large institution; the case of the Leake and Watts Charity, embracing questions of wills and of charitable uses; the Mason will; the Phelps will; and running through all the same period a series of insurance causes, of mercantile causes in every form, of revenue cases, either on the forfeiture side of the Federal courts, or involving the question of duties and their exaction, combine to fill up, year by year, month by month, day by day, the course of his practice embracing these important topics of jurisprudence.

"In the United States courts, the case of Carner and Astor, known as the Putman County Land case, and finally argued in the Supreme Court of the United States, in the year 1830, by Attorney-General Bronson and Mr. Webster on the one side, and by Mr. Ogden and Mr. Wirt on the other, was the termination of a great and important controversy between titles made under the Statute of Forfeitures following the Revolution, and the title under a private conveyance, resulting in the maintenance of the superior title of the private conveyance. This is understood to



have been a case in which Mr. Lord was the responsible and managing lawyer on the side of Mr. Astor, although the principal, if not the whole forensic display, at least, was in the hands of the very eminent lawyers, on the one side or the other, whose connection with the case is historical. Then, soon after the disasters of 1837, in which the downfall of the credit system of this country had induced a large series of litigations on the part of foreign bankers and foreign merchants pursuing their debtors here, there came the celebrated case of *Bell & Grant v. Bruen*, in the year 1843, resting upon questions of commercial guaranty. A little later, in the year 1850, the well known insurance case of *Barnard v. Adams* in the Supreme Court of the United States, tried first in the Circuit in New York, involving the question of the contribution in general average, to make good the loss of a ship voluntarily stranded, under peculiar circumstances of apparently hopeless peril—an interesting and novel question, upon which Mr. Lord was successful in supporting his views. The case of *Jasigi v. Brown*, a little later, in the year 1854, was a case of considerable magnitude, involving the question of accrediting by letters of commendation or representation, parties who were involved afterwards in debts for which suits were brought. The Methodist Church case followed—one of those notes in the prelude of the great storm which finally ended in the armed revolt and in a threatened dissolution of the country. This great controversy arose on the partition of the Methodist Church between the North and the South, and I remember the case as almost the only one which, as an observer, an interested listener from beginning to end, I have been unable to attend since I have been at the bar; a case discussed in New York on the one side by Mr. Choate, of Boston, and Mr. George Wood, of New York, and on the other, by Mr. Lord, and Mr. Reverdy Johnson, of Baltimore; a case, the splendor of whose debates astonished as it delighted our bar, and in which Mr.

Lord's peculiar traits and powers, contrasting so much as they did the brilliancy in one way and another, or the solidity of these eminent lawyers, nevertheless left the impression upon the court and hearers, that Mr. Lord's mode of style and dealing with forensic questions within the region of practical and sensible decision was as marked, as useful, and as distinguished, as any of the more brilliant or more imposing forms of forensic power which his opponents or his associates presented. Then came the series of Bank Tax cases, the prize causes in the courts of original jurisdiction, and finally the argument in the Supreme Court of the United States of the principal and interest prize cause, that of the Hiawatha, in which the doctrine of the war, as bearing upon the public law of prize, and of submission to the laws of blockade, growing out of the first emergency in which our civil war had placed the government towards the revolted States, were the topics discussed. In the case of the Savannah privateers, involving an interesting question of criminal law, in which these same questions arose, Mr. Lord appeared for the defendants.

“If to the causes which have been enumerated there should be added the large number of cases in which he was engaged, and which, though important, did not possess the magnitude of those that have been referred to, the reader would be surprised at the vast amount of legal business which he conducted during his practice.

“And yet amid this vast field of labor, he found time for extensive reading. He never discontinued his legal studies, and it was one of his habits to read leading cases in the reports, merely for the intellectual pleasure which this employment afforded; and he often remarked that nothing gave the mind a more healthy tone than the study of the older leading cases, especially those in which the points of counsel fully appear, or where there are dissenting opinions by the court. But neither the love of legal studies

nor devotion to his profession impaired his taste for literature.

“It has thus been well said that there are few traits of character more pleasing in themselves, more strongly indicative of a naturally ingenuous and uncorrupted mind, than the power of thus preserving a love for the tranquil enjoyments of literature, unimpaired by the excitement of professional life. With Mr. Lord, there was no revolt from the associations of the past, no affectation of novelty, no yielding to thoughtless progression, and hence he never abandoned entirely the studies of his youth. The amplitude of his mind was continued and enlarged by that course of reading which tended to the investigation of moral truth. He was a close and philosophic reader of history, and kept up an enlarged stock of elegant literature, and studied with increased delight the older English writers, and the splendid paraphrases of Pope never failed to afford him pleasure.

“That political ambition which is kept alive by the love of office and which calls into action the most malignant passions was always distasteful to him. Indeed he had no political ambition whatever. Had he desired political distinction, he possessed that ability and those elements of popularity with the people which would have advanced him to high distinction. Once in his life, he was made a candidate for the State Senate. He was invited twice to a seat on the bench—each time by appointment to fill vacancies—once in the Supreme Court in the first district, and once in the Court of Appeals. On each occasion he declined the appointment, not from any sordid motive—as all will believe who knew him—but from a deep grounded distrust of the plan of an elective judiciary, then recently adopted in New York, and from a consequent unwillingness to be in any manner connected with the system.”

Among the many eminent lawyers who, during his long practice, studied their profession with him, and

who survive him, is William M. Evarts, who thus describes his entrance into the office of Mr. Lord :

“It happened to me,” said Mr. Evarts, “to become acquainted with Mr. Lord, the first among the lawyers of New York that I ever knew. During my college residence at New Haven, I had become acquainted with his person, which had been pointed out to me in some of his occasional visits to that city, the seat of his college education. Some circumstance of family connection led me afterwards, when a student at Cambridge, upon the casual suggestion of a comrade that I should turn my attention to New York rather than remain, as I had expected to do, in Boston—to think, as a possibility, that my acquaintance, or the means that I had to make the acquaintance with Mr. Lord, then eminent in his position at the bar, might give me an introduction to his care and attention, and might afford me opportunities of education, under circumstances which required me to be very careful in regard to expense and risk, in any step that I should take which might lead me to venture to become an aspirant for the distinction and success of the profession in this great city. I therefore feel that Mr. Lord was really the reason, the occasion, the opportunity, the means by which I was permitted to be introduced to any degree of professional labor and prosperity, which may in my own sense, or that of any about me, have attended me. I remember very well the kindness with which he received me, and the willingness which he expressed to receive me into his office ; and when, at the appointed time, the succeeding summer, that of 1839, I presented myself, he said :

“‘Well, Mr. Evarts, you have come to commence your studies and be a lawyer in New York ;’ and I replied doubtingly perhaps, as I supposed, modestly, “‘I have come to try.’”

“‘Well, sir,’ said he ; ‘if you have only come to try, you had better go back. If you have come to stay, we shall be glad to receive you.’”



“And when I amended my answer by the information he gave me, that it was possible for me to stay—that I had come to *be* a lawyer, he received me cordially; and from that time to the time of his death he was my friend, my supporter and my guide.”

As has been remarked by a recent writer :

“Mr. Lord was extremely simple in his tastes and habits, and it was one of his most striking traits that he was unwilling to have any one do for him what he could by any means do for himself. He always made his own minutes of testimony, kept his own books of account, and often copied his own papers, although all of these services would have been gladly rendered by others, if he would have allowed them to do so. These peculiarities were partly owing to his extraordinary capacity for attending to details, without neglecting more important matters, but they were also partly due, and perhaps in an equal measure, to the impatience of being waited upon. He was systematic in the arrangement even of trifles. The articles on his library table were never misplaced; the papers in his pigeon-holes were always in order, his drawer contained for years the same pen-knife, seal, and pencil, and always in the same corner; and his little pocket diaries, filled with the brief memoranda of his busy life for five-and-twenty years, were, after his death, found carefully preserved and arranged in succession, according to their years. The same habits of system and order could be observed in all the operations of his intellect. His thoughts, instead of floating at random through his mind, fell naturally into logical sequences, which aided his memory in retaining them. And thus whatever he had once acquired was kept ready for immediate use, and always in the most available form.”

Mr. Lord, though not peculiarly eminent for his colloquial powers, was animated, accurate and pleasing in conversation. In public and in private, he was distinguished for the simplicity of his manners.



“He had nothing of that dictatorial arrogance, that constant effort at strength and originality of expression, and those almost mechanical arts of conversation, by means of which mediocrity of intellect is too often concealed beneath well-sounding sentences, and very ordinary men metamorphosed at a cheap rate into loud and ambitious talkers, and mimic Johnsons.”

The gentleness of Mr. Lord's disposition admirably fitted him for the purest enjoyments of domestic life. In his home, he was the center of the deepest love and reverence. It was a home where refinement, intelligence, affection and religion blended to render it attractive and pleasing—for him a happy retreat from the cares, struggles and collisions of life.

From his earliest years, he was a firm believer in the doctrines of the Bible, and this belief was grounded upon an earnest conviction, resulting from a serious examination of the evidences and doctrines of Christianity, and the frequent perusal of the Scriptures. There was an innate reverence of God and all his works in his heart; he recognized something god-like in man's nature, and he believed the intellect to be an emanation from Deity, the indubitable evidence of an immortal nature. He saw the marks of divine intelligence in the heavens and in the earth; but he saw it more liberally displayed in the gifted mind, in magnanimity, in unconquerable rectitude, in philanthropy, which forgives every wrong, fosters kind affection and tender love, and is animated by examples of heroic and saintly virtue. All these he regarded as the pledges of a celestial inheritance.

“In the year 1833, he united with the Brick Presbyterian Church, then under the charge of the Rev. Gardiner Spring, D. D., and in the following year he was elected a member of its session, in which connection he continued until his death, bringing to the discharge of his duties as an elder a spirit of great conciliation, as well as the best abilities at his command.”

As was well remarked, by the Rev. J. O. Murray, in an address delivered at the funeral of Mr. Lord, "Religion, indeed, owes a debt to the legal profession—the pulpit to the bar—which should be readily acknowledged; not only as the high-minded and eminent jurist keeps before the mind of men the great idea of law—a binding moral force, which the very word religion in its etymology suggests; but as such a man helps to preserve the true order and stability of society, in which Christian institutions have their best growth."

This sketch cannot be more appropriately closed than by adopting the following language of one who prepared a truthful memorial of Mr. Lord, soon after his death:

"His Christian character was one of mature growth, such as results from a union of warm feelings with broad and enlightened views. He took almost equal pleasure in devotional books and in those which expounded the theoretical doctrines of Christianity, and thus while his emotions were always quick and glowing, he was also ever prepared to defend his faith with solid arguments. The inevitable absorption of his time in his professional pursuits prevented him from taking a very active part in the current benevolent and religious enterprises of his day; but, whenever an emergency arose in which his practical wisdom, or his unflinching courage in opposing error could avail the cause of truth, he stood always ready—and was often called upon to do his part. And on all such occasions he brought to the work a spirit of meekness and moderation which calmed him even in the heats of controversy. He never forgot that while good men might, and often must, differ in their views, they should never give way to bitter wranglings, nor lose sight of the truth in the pride of self-assertion. And thus his counsels were not only wise but safe; and his loss was felt in many quarters

where the weight of his influence had been relied upon in every time of trouble and perplexity.

“For several years before his death, there had been indistinct threatenings of paralysis which justly alarmed the members of his family, and which led him reluctantly but gradually to withdraw from his much loved profession. He was not wholly insensible to their warnings, but he possessed a wonderful faculty of refusing to dwell upon evils that he could not avert, and he succeeded in maintaining his cheerfulness in spite of many dark forebodings. But his malady made steady though measured approaches, and he himself doubtless soon began to realize, what had been from the first apparent to all around him, that his disease was a fatal one, and that the final issue could not long be delayed.

“Under these circumstances, his spirit became, if possible, more subdued and gentle, and the graces of his Christian character gathered even greater luster than before. The summer of 1867, which preceded his death, was one of great anxiety to his family, and they entered upon the winter with sad anticipations of coming sorrow. All went well, however, until the new year had begun—a year that to others was to bring its completed months of checkered joys or sorrows, but only a few short days of suffering to him. A trifling professional effort, made early in January, which in his years of vigor would never have stirred his pulse or left a trace of weariness upon his frame, appeared to give a new impetus to his then slumbering disease, and from that time his system seemed to lose its balance, and his bodily functions began to fail. It was a most painful thing for those who so deeply loved him, to see this physical change come over him, while his mental powers, with all their acute perceptions, remained untouched. But his own courage did not desert him, for it was founded on never-failing supports. He was deeply affected at times by thoughts which he could not entirely drive away, but he fell

back upon the consolations of religion, and they upheld him. Those who gathered with him at family prayers, one Sunday evening but a few weeks before his death, will never forget with what a subdued pathos he read and remarked upon the beauty of those verses of the seventy-first Psalm :

“Cast me not off in the time of old age; forsake me not when my strength faileth.

“Now also when I am old and gray-headed, O God, forsake me not.’

“They were plainly passages which had been often in his mind of late, and the force of which he felt most deeply as his years seemed drawing near their end.

“It would seem almost a desecration to dwell much upon the closing scenes of his life. The deep experiences and trying struggles which, even for the pure and good, hang around the hour of parting from loved ones on earth, are too sacred to be held up to the gaze of any but those who have perforce participated in the sorrow, and whose memories can best recall to them those mournful scenes. But, even were we to lift the curtain for a moment upon any part of that sad month which preceded his death, we should find him always, as it were, in a hallowed atmosphere, surrounded with all the truest affection that faithful hearts could bestow, and upheld by Christian consolations and Christian hopes. The dreaded hour came at last. Up to within a few days of the final moment his mind was clear, and he was able to communicate with those who hung around his bedside. But, as the last hour drew near, his faculties began to lose their power, and consciousness succumbed. Yet, when the change came upon him, a placid calm seemed to steal over his features, and peace and rest were plainly written there. He was in a great measure spared the dreadful agonies of mind and body which so often accompany his disease, and at the last, life seemed to



sink away from him as quietly as the sands drop through an hour-glass.

• “On the morning of March 4th, 1868, it was apparent that that day would be his last. All remedies had lost their power, and nought remained but to await, in patient resignation, the long-apprehended moment. Once in the early forenoon he sank very low, but again revived to nearly his former strength, and continued through the hours of daylight with but little change, except that his respirations grew gradually quicker and fainter. At last the night came on, spreading its curtain across the sky, and casting its shadows on that upper room, where loving hearts were throbbing in silence at the thought of the long parting. A little group, where none were absent whom he would have wished to see could his eyes have opened, nor any present who could not call him ‘husband,’ —‘father’—sat, sad and sorrowful, within the sound of his short, quick breathings, as he lay motionless upon his couch. From time to time one of the number would approach the bed to gaze once more upon his serene but pallid face, or, in helpless affection, to render some service which it was hoped might give him some relief; but it was evident that all earthly help was unavailing, and that the King of Terrors was at hand. At about 9 o’clock a few convulsive gasps gave signal that the end was near. Quickly and silently the little circle closed around him; and then, when all was hushed and still, save the sobbing, which he could not hear, he gave one struggle more, and breathed his last, surrounded by all whom he held most dear upon earth, and whom he most would wish to meet in Heaven.

“Death found him well prepared. His peace had long been made with God; and when the summons came, it was to call him from a life of useful toil below to an eternal rest above.”



## B. DAVIS NOXON.

Born at Poughkeepsie, in 1788.—Obtains the Rudiments of his Education at a Common School.—Enters Poughkeepsie Academy.—Completes his Classical Course and Commences the Study of Law.—Called to the Bar.—Removes to Marcellus and Commences his Practice.—His Legal Business.—His Opponents at the Bar.—Their Sagacity.—Noxon Compelled to use every Exertion to Sustain Himself against their Attacks.—Able at Last to Resist and Return the Attack.—The Attachment Case.—The Defective Affidavit.—How Noxon Sustained it.—Bridges an Error and brings his Client safely over it.—Condition of the Laws and the State Reports when he Commenced his Practice.—His Love of Fishing and Hunting.—It brings him before the Court.—His Fishing Excursion Announced by his Boots.—The Preferred Cause.—Judge Monell at the Ithaca Circuit.—Characteristics of Noxon Exhibited by an Amusing Incident in his Early Practice.—He Removes to Onondaga Hill.—His Compeers at the Bar.—Removes to Syracuse.—James R. Lawrence.—E. W. Leavenworth.—Noxon forms a partnership with him.—Noxon as a Legal Speaker.—Compared with other Speakers.—His Knowledge of Land Titles.—The Important Trials in which he was Engaged.—His Social Qualities.—His Character as a Private Citizen.—Address of Honorable C. B. Sedgwick before the Members of the Onondaga Bar, after the Death of Mr. Noxon.

B. DAVIS NOXON possessed one of those original, active, reflective minds which have a tendency to superiority. Although he seemed to be naturally constituted for the legal profession, his mental endowments would have enabled him in almost any avocation to pass the bounds of mediocrity. Bold, ardent, fond of investigation, entering deeply into fundamental principles, a ready reader of character, with a forcible and pleasing eloquence, he was admirably capacitated to attain a high position at the bar by the force of his character and his intellect, for upon these alone he was compelled to rely for advancement.

He was born at Poughkeepsie in the year 1788, where he resided until he was admitted to the bar. He obtained the rudiments of his education at a com-

mon school, where the highest faculties are often developed. At length he entered the Poughkeepsie Academy, where he remained nearly three years. Here he perfected himself in the natural sciences, and made considerable proficiency in the languages. Having thus completed a thorough academic course, he entered the office of the late Philo Ruggles, then an eminent member of the bar, with whom he remained until the year 1809, when he was called to the bar. Immediately after this event, he became a resident of Marcellus, in the county of Onondaga, where he commenced his practice. Entering ardently into the duties of his profession, the young lawyer soon exhibited a mind capable of grasping and analyzing the intricacies of the law.

At first, his practice was principally confined to justices' courts, in which, at that time, the ablest members of the profession occasionally appeared. This kind of practice opened a field of labor in which no one without considerable ability could sustain himself.

In these courts, he was compelled to contend with Kellogg, Sabin, Forman, Randall and others, who at that time constituted the fighting material of the bar in central New York. Hence young Noxon was forced to study hard, think closely, act with energy, watch every point with the closest attention, in order to sustain himself against the attacks of his subtle opponents, who often, in the commencement of his practice, entrapped and overthrew him. But at each fall, like Antæus contending with the celestial giant, he only touched the earth to spring with renewed vigor to the contest, and he soon gained the ability not only to sustain himself against the sudden onset, to disentangle himself from the meshes which art and experience threw around him, but in his turn to be formidable in the attack, and sagacious in detecting the errors and omissions of his opponents.

At a period when he had begun to evince some-

thing of his superiority and ability to protect himself he commenced proceedings by attachment in a justice's court against a dishonest debtor, who attempted to abscond with his property, intending thereby to defraud a poor honest shoemaker out of a small sum of money, which he had labored hard to earn.

Nothing could exceed the technicality of the affidavits and other papers on which justices' attachments in those days were founded. He who possessed the ability to prepare these papers so that they would withstand the attack which was invariably made upon them, might well lay claim to considerable reputation as a lawyer. In the preparation of the papers in this case, Mr. Noxon encountered many difficulties, and when finished, they contained so many erasures and interlineations, that it was extremely difficult for any one to read them but himself. Deeming them sufficient, the justice issued the attachment, and the defaulting debtor's property was seized. On the return day of the process, he appeared with one of the most skillful lawyers in the county, who, seizing Noxon's affidavit, commenced studying it for the purpose of detecting some error by which he could quash the proceedings and allow his client to escape. For a long time he scanned it closely and critically, occasionally growling about the manner in which it was written. At length he became satisfied that he had discovered the omission of a material averment in the affidavit, which rendered all the proceedings under it void; and he promptly moved the court to vacate the attachment, pointing out the error, as he believed, very clearly and distinctly.

"Mr. Noxon," said the justice, after listening to his opponent, "if that error really exists, I must grant this motion. What have you to say about it?"

The young lawyer, who comprehended his danger at once, and as quickly conceived a mode of escape, promptly said:

"I agree with your honor that if the error to which

the counsel alludes really exists, these proceedings cannot be maintained; but let the counsel show, if he can, that they do exist," said Mr. Noxon; and, taking the paper from his hand, he coolly proceeded to read it through. When he had finished, sure enough, there was nothing wanting, everything appeared in the full strength of appropriate legal diction.

"The counsel e t'n't read it right," roared the opposing lawyer.

"What do you mean, sir? Do you mean to come here and take advantage of my poor writing, and construe my language to suit yourself? Do you think that, because everybody cannot write as well as you can, that you are to have your own way in everything?" said Mr. Noxon, giving the justice a meaning look.

"I mean to say," said the lawyer, "that your affidavit is good for nothing, that it does not contain the proper averments; and I ask the court to dismiss the proceedings."

"Gentlemen, I really don't know what course to pursue in this matter. The way one of you reads the paper it is good for nothing, and the way the other reads it, I can see no error in it. How is this to be decided?"

"By reading the affidavit yourself," said Noxon, boldly.

Accordingly, the justice commenced reading. For a time he succeeded admirably, making good progress, until he reached the region of erasures, alterations and interlineations. Entering it with great determination, he continued until fairly entangled amidst the intricacies of scratched and erased lines, which crossed and recrossed the paper in devious courses, while here and there legal phrases appeared, like distant neighbors in a wilderness, and then he came to a full stop. Taking breath, he commenced again. After much studying, he said:

"Well, I guess likely, if all these words could be

put together, just as you intended, Mr. Noxon, I think there is nothing wanting."

"Exactly, your honor," said Mr. Noxon. "I neglected to put in one or two of those characters called carets, which, your honor understands, show where interlined words should be placed."

"Well, Mr. Noxon, suppose you read the paper, and I'll look over." J—

Accordingly, the young lawyer again read the paper, the justice and the other lawyer looking over; again it appeared that nothing was wanting; all the requirements of the statute were fully included, and the paper was really a strong one.

"Yes, I see, it's all there, it's all right, very plain to be seen, too, only them carets ain't there," said the justice.

The opposing lawyer, seeing himself in danger of being flanked in his attack, made a desperate struggle, and finally proposed to read the affidavit again himself, assuring the justice that he could show him the omission very plainly.

"What good will it do you to read the paper. You don't know where them carets should come in, and nobody else but Mr. Noxon and myself do, so you can't read the paper right if you try. I tell you carets are very particular things; writing wouldn't be much without them. So I shall hold the affidavit good, and if you have got a good defense, no harm will come to you," said the justice.

The cause was then tried. Mr. Noxon succeeded in a case where right and justice were entirely with his client, and where, by bridging an error, he saved his client's honest demand, and his own reputation. The opposing lawyer, however, advised his client to appeal the case, insisting that there was a perfectly fatal error in the affidavit.

"Well, 'Square, 'spose there is a big mistake, what's the use trying to do anything with it. That confounded Noxon—he'll come in and talk to the



court about them 'ere carups and things, and he'll make black white, and white black, and I shall get beat again. Carups was too much for you that time, 'Square, so I'll pay up and have done with the matter," said the man.

It was the delight of Mr. Noxon to measure weapons with older and more experienced opponents, because he was well aware that in this way he gained strength and confidence. From the commencement to the end of his professional life he was a thorough, laborious and constant student. One of his most marked characteristics was his ability to understand the weak and strong points of his own case as well as those of his adversary.

At the commencement of Mr. Noxon's practice our State reports were few, reaching only to the third or fourth volume of *Johnson's Reports*; but he never failed to consult diligently the common law, and those works on which the careful student depended so much for light and learning. He was a close, constant and practical thinker; and although he was often charged with indolence—a charge to which many industrious lawyers have been subjected—those only called him indolent who were unacquainted with the study and thought revolving in that mind which in after years so captivated courts and juries with learning and eloquence.

Within a very short time after Mr. Noxon commenced his practice he was regarded as a successful lawyer, and his brilliant future career at the bar was plainly foreshadowed. But though his professional ambition was great, he knew how to curb it, so that it did not so far overleap itself as to render him forgetful of those enjoyments so necessary to the health and vigorous expansion of his physical and mental powers.

Fishing and hunting were his favorite amusements; and it may be safely said that, with trout-pole in hand, he threw his line, with the skill of a Walton, into

every stream where trout abounded in Onondaga and the surrounding counties, while his gun resounded on every marsh, every woody hill-side, every shaded hill-top, in every dell and deep glen within his reach, where a bird could be flushed or game of any kind started.

Many years ago he was attending the Tompkins Circuit, at which the late Judge Robert Monell presided. The cause he was waiting to try was set down for Wednesday morning, the first week of the circuit. On the adjournment of court Tuesday evening, Mr. Noxon accompanied a friend home, who resided a few miles out of Ithaca, where he remained during the night.

In returning to town the next morning the axle of his friend's carriage broke, and he was therefore considerably delayed. On reaching the court room he found another cause on trial. It happened that Honorable Hiram Gray, then in the midst of his extensive and brilliant practice, was waiting to try the next cause. When the case on trial was disposed of, Mr. Noxon moved his cause, claiming the precedence. Judge Gray, however, objected, on the ground that he had lost his privilege by his tardiness in the morning, and insisted that his case was the next in order. Whereupon, Mr. Noxon, as an excuse for not being present when his cause was called, informed the court of the accident which occurred while on his way to the court room.

"Had it not been for the broken axle, your honor," said he, "I should have been here in due time."

"His excuse is not a proper one, your honor," said Gray; "he has been off fishing and strayed too far away."

"How do you know that?" asked Noxon.

"Because," said Gray, "when you came into the house I heard your boots go *squish, squish, squish*; and that, as everybody knows, is a sure sign that you have been a-fishing."

Judge Monell, with that dignity which characterized him while on the bench, said :

“I myself often indulge in the healthy and pleasing amusement of fishing, and I am inclined to encourage the pastime in others. It is a manly art, and should be cultivated ; therefore, brother Gray, you ought to know that upon your own showing the counsel’s excuse will be regarded by this court as a proper one. Take a jury, Mr. Noxon.”

At the dinner table that day, Gray suggested to Judge Monell the propriety of having the rules of the court so amended that when counsel desire to fish, they can enter an order to that effect in the common rule book, and thereby delay the cause without prejudice, until they return, provided they do so during the term, if not—then their causes were to go over without costs, as a matter of course.

“That would hardly do, brother Gray,” said the judge ; “there would soon be too many bungling fishermen about, if such a rule was adopted. If you could make the rule apply only to accomplished fishermen like Noxon, Hurlbert, and some others I could name, I think I should approve of it.”

Notwithstanding Mr. Noxon’s reflective and speculative mind, he acted with great energy in practical affairs ; and under all circumstances he maintained his firmness and gravity.

This was illustrated in his first case before a magistrate. He examined and cross-examined the witnesses in the action with unusual ability for one so unaccustomed to the business, and when the evidence was all taken, summed it up very forcibly. During his argument, the lawyer opposed told him he lied. Noxon immediately knocked him half senseless into the lap of the justice, and then continued his remarks as though nothing had happened.

The next day, he was arrested on a charge of assault and battery, and taken before a magistrate in an adjoining town. This justice, who was a good

natured, well-meaning Dutchman, having heard the evidence against the prisoner, was very much puzzled to know what disposition to make of the case. After studying some time upon it, he called to his wife, who was sitting by the door in an adjoining room, and asked her what course he had better pursue.

Polly inquired of one of the witnesses how soon the blow was given after the lawyer told Noxon he lied.

"It was a word and a blow," was the reply.

She then continued her knitting without uttering a word. At length the justice, who was anxiously waiting for her reply, said :

"Vell, Polly, vat you tink now?"

"I think Mr. Noxon served him right," said she.

"Vell den, I tink so too; and dat ish the shudgment of tish court," said the justice, straightening up with the importance of his official position, and the prisoner was discharged.

In 1828, Mr. Noxon moved to Onondaga Hill, where the court house and clerk's office were then located.

He was then thirty years of age; and although he had been at the bar but eight years, he had already acquired a reputation beyond the limits of his county. His acquaintance increased at each successive court, and his ability exhibited itself in every trial, attracting the attention and gaining the respect of the distinguished jurists by whom he was surrounded.

He continued to reside at Onondaga eleven years; and when the court house was removed to Syracuse, Mr. Noxon also removed to the latter place. Many now living will remember the interesting and exciting trials which occurred in the old court house at Onondaga, where Spencer, Savage, Walworth and Nelson presided, and where the old gladiators of the bar contended. Among them, James R. Lawrence and Mr.

Noxon were conspicuous—contesting the rights of their clients in almost every cause on the calendar. James R. Lawrence was in his day a power at the bar. He possessed the rare faculty of causing jurors to believe in him; while his fine elocutionary powers, set off by a keen and sparkling wit, rendered him attractive and pleasing to the people. As a sensible farmer, residing in the town of Manlius, once said of him:

“Lawrence is one of the institutions of Onondaga county. Not to see him in our courts would seem like having no courts at all.”

Immediately after becoming a resident of Syracuse, Mr. Noxon formed a copartnership with Elias W. Leavenworth, a lawyer of commanding talents, and a gentleman of many rare and attractive qualities. For the long period of fifty-five years Mr. Noxon's professional labors were a splendid success. It was during the last twenty years of his practice that he achieved those high honors which are awarded to a successful and popular lawyer. It is difficult to decide whether he excelled at the circuit before the jury—where words of burning eloquence convince men, and cause them to yield a willing assent to the supremacy of the gifted orator—or before the court, where abstract questions of law alone are discussed, and where the only charm which endows the speaker consists in the facility of wielding logic and in the subtlety and compass of reasoning.

But in neither place was Mr. Noxon one of those speakers who always talk as long as they are listened to—measuring the quantity of their eloquence by the time that can be afforded for its display—the quality, by the nature and patience of the audience to whom it is addressed. He knew how to express his thoughts in brief, well-timed, admirably arranged and elegant language, perfectly free from exaggeration, and suited to the capacity of his hearers. The House of Commons, it has been said, is strewn with the wrecks



of the reputations of eminent lawyers ; and perhaps the same remark may, to some extent, apply to the legislative bodies of our own country. Often the most successful speaker in the parliamentary arena is he who often “abandons the point of debate altogether, and singles out from the adversary some victim whom he may torture by ridicule or reproach, or lay hold of some popular party topic likely to point the public indignation against his opponent, or flatter the passions of his older adherents. Many of the speeches in such places are not, in effect, addressed to the supposed audience, but to the people ; and, consequently, are like scene-painting—which is to be viewed at a distance, and by the unskillful is more remarked for the boldness of the figures and the vivacity of the coloring than for nature and truth. It is not the *genus deliberativum*, but the *genus demonstrativum* of eloquence that is most successful there.”

As Mr. Noxon confined his elocutionary powers and his ambition to his profession, he never shared the fate of those who, like actors, are permitted to wear the habiliments of office for a brief period, to appear in character for a short time, and then pass behind the scenes, out of sight and out of mind. Consequently, it is impossible to tell what he would have been, as a speaker or manager, in those places where politicians do most congregate.

That he succeeded at the bar as a powerful speaker and advocate, is certain. That his fame rests on no ephemeral circumstance, but is the result of solid acquirements and of great mental discipline, is equally certain. For twenty years his voice was heard in the court rooms of the surrounding counties, with such antagonists as Mullen and Chittenden, of Jefferson ; Allen, of Oswego ; Seward, Rathbun, Bronson, and Hurlbert, of Cayuga ; Beardsley, Spencer, Denio, Gridley and Jenkins, of Oneida ; Marvin, Worden and John C. Spencer, of Ontario ; Collier, of Broome ; Cady, of Montgomery ; Johnson, of Tompkins ; Ste-

vens, Hill and Reynolds, of Albany ; J. C. Smith and Adams of Wayne ; and others, alike distinguished in other parts of the State.

Perhaps no lawyer in the State was more learned in the trial of causes relating to lands in the military tract, than was Mr. Noxon. His familiarity with the titles growing out of disputes relating to lands set apart to soldiers for service in the Revolution, gave him a reputation as wide as the State ; and whenever cases relating to these lands were brought before the courts, among the able and distinguished men at the bar employed in settling these titles, were to be found such men as Kellogg, Cady, Wood, Noxon, and other jurists occupying the front rank in the profession. He was familiar with the practice and proceedings in all the courts of law and equity in the State, as well as the Circuit and District Courts of the United States.

As a criminal lawyer, he often appeared in the defense of men charged with high crimes, and although the criminal law was not with him a specialty, who can forget the masterly power with which he probed to the quick an unwilling or refractory culprit on cross-examination ? Who can fail to remember the scathing rebuke and lashing dishonest witnesses received on the summing up ? It is impossible to give a sketch of the important trials in which he took a part as counsel during a period of nearly sixty years devoted to his profession, and it is hardly possible that any lawyer of the State had been engaged in more trials and won brighter laurels. Often when he met Spencer of Oneida at the circuit, every cause on the calendar would be stoutly contested by them as antagonists, and the fight be as hard and desperate as when "Greek met Greek." Of some of the cases in which he was engaged, and met the giants of the profession, we might mention the case of Wilbur, tried in Madison county for murder, and of Bates for the murder of Riley, tried at Batavia, in which Mr.

Noxon was counsel for the people ;— of *Marsh v. Hutchinson*, tried at Onondaga, and in which Hurlbert, Adams, Randall, Beardsley, Lawrence, Gott, and others were engaged ; of *Russell*, tried at Ballston Spa by Mr. Noxon and John Van Buren on one side, and Honorable J. K. Porter and Samuel Stevens on the other, and in which other distinguished counsel also participated. This last case had been previously tried at Poughkeepsie, when Daniel Webster appeared as counsel for one of the parties. He was also engaged in the case of *Hubbard v. Briggs*, tried at the Wayne Circuit in 1844, and afterwards at circuit six or seven times, and several times in the Supreme Court and Court of Appeals. In this celebrated case, which for over twenty years was in the courts of the State, many of the master spirits in the profession were engaged ; among others, General Adams, John Maynard, J. A. Spencer, Alvah Worden, Mark H. Sibley, T. R. Strong, Daniel Pratt, George F. Comstock, C. B. Sedgwick, Judge James C. Smith, E. G. Lapham, and Francis Kernan. The libel suit brought by Elam Lynds against the proprietors of an Auburn newspaper, for charging Lynds with cruelty to prisoners as keeper of the Auburn prison, was tried at the Onondaga Circuit, and was summed up by Mark H. Sibley for the defendant, and Mr. Noxon for the plaintiff. The case of *Miller v. Opdyke*, tried at the Seneca Circuit, involving the title to a military lot, was tried by James Noxon as attorney, assisted by B. Davis Noxon, his father, for the plaintiff, and by S. G. Hadley, assisted by Daniel Cady, for the defendant. Other important cases might be referred to as having been tried at the Oswego, Jefferson, Lewis, Herkimer, Oneida, Madison, Chenango, Broome, Cortland, Yates, Cayuga, Tompkins, Chemung, Wayne, and Monroe Circuits, all of which Mr. Noxon was in the habit of attending and displaying there the abilities of a profound and distinguished lawyer.

Often in the trial of causes at these circuits, without knowing what was the question to be tried, Mr. Noxon entered upon the trial, carefully taking the minutes, and as step by step the case unfolded itself, he seized the main points and became master of the case long before the testimony of the parties had been given. Now came into play the wonderful gifts with which nature had so well endowed him. His strong common sense, his quick perception of right and wrong, his keen recollection of important cases and principles which bore upon the case on trial, all made him appear as if he had made of the case a careful and diligent study. Now came a motion in relation to the admission of testimony, and then a motion for nonsuit, and then burst forth from his lips that native power and strength which convinced the judge, overwhelmed the adversary, and delighted the auditory. With no effort at eloquence, and no seeming choice of language, his address was the very embodiment of nature's gifted orator, and his words so apt and expressive, that it seemed as if nature had furnished first the thought, and then the word fittest to express it. But the questions of law were settled, the evidence closed, and then came the address of counsel to the jury. In addressing the jury, Mr. Noxon never flattered, never coaxed, and rarely appealed to passion. The strong points in his case, and the weak points of his adversary were held up to the jury in language so plain that no one could mistake his words. If arguments were needed to convince, they were drawn from the every-day transactions of life, and jurors were appealed to from their own good sense, from their every-day observation, and from their natural love of right against wrong. He never feared to tell a jury of the difficulties and embarrassments of his own case; he never delighted in poetic flights; he never studied to tickle the ear with enchanting words; but often in those cases where others aimed to please by well-turned periods, and choice and elegant language, as



if by inspirations his eloquence and brilliancy in the use of the most common words, and by the most natural and easy figures of speech, won the hearts of the jury and threw a spell over the crowded court room drawn thither to listen to his thrilling words.

The sketch here drawn would be highly imperfect unless we mentioned that to the rare gift and acquirements attained by great labor, and incessant toil, he was not less distinguished for those high moral qualities without which true greatness is never earned. To speak of Mr. Noxon as an honest man conveys no just idea of his true nature. That he detested fraud and abominated wickedness and trickery and every form of rascality, was conspicuous in every act of his life. Truth and fidelity shone forth in every element of his nature. His word was sacred among his professional brethren, and no client ever feared that his rights would suffer while intrusted to his hands. Mr. Noxon was not a politician in the ordinary acceptation of the word. He had no ambition for office. He loved the law and was ambitious of standing on the upper round of the legal ladder. The schemes, tricks, and caucuses of politicians were detested by him as corrupting and defiling. He entertained no higher opinion of a dishonest politician in his own party than he did of one in the opposition. He loved his principles and endeavored to persuade men they were right. He felt a bitter feeling and hatred towards all kinds of opposition that upheld fraud. He never winked at iniquity anywhere. His social qualities, his genial nature, his sympathetic heart, which, in his everyday life was exhibited around his own fireside and in his own family circle, were extended to his neighbors and friends. He loved to meet and enjoy the society of the young, and to take by the hand the young man just entering upon his professional life and point him to the stars shining in the legal horizon. His manner



was so winning, his words so kind, that no one thought of being timid in his presence.

At a meeting of the bar of Onondaga county, called to give expression to the feelings of the bar upon the decease of Mr. Noxon, Hon. C. B. Sedgwick said in relation to the litigation growing out of the titles of land in the military tract :

“The *nisi prius* courts were held by the judges of the Supreme Court ; the giants of the profession, the elder Spencer, Kent, Platt, Van Ness, Livingston, Tompkins and Yates, lawyers of the highest reputation from all parts of the State—Van Vechten, Elisha Williams, Emott, Daniel Cady, Martin Van Buren, were constant attendants upon our courts. These were the men with whom the young lawyers of that day were to measure their strength, and such the tribunals which would decide where victory was to be awarded, and among such lawyers Mr. Noxon was conspicuous. In knowledge of this branch of the law, in careful preparation, in the acumen necessary to mark every nice distinction, in the skill to detect and expose fraud and perjury, in boldness, tact, pertinacity in his hard logic for the court, and his skillful appeals to juries, he was in the front rank of his profession. Experience in the trial of such causes made him a complete and thorough lawyer, and he stood almost without a peer or rival in real estate law throughout his professional life. At the time Mr. Noxon commenced practice, the reports of this State consisted of *Johnson's* and *Caines' Cases*, and four volumes of *Johnson's Reports* ; the statutes of the State were hardly equal in bulk to one volume of our present Session Laws ; Story and Kent were busy as advocates or judges in acquiring the reputation which afterwards made their commentaries authority. The works of Tidd, Chitty, Saunders, Bacon, Coke, Sugden, Fearne, Blackstone and Phillips, upon practice, pleading, evidence, and leading legal principles, contained about the whole armory of the

common law. Mr. Noxon studied the cases which shaped and settled the law of this State as they arose. In many important ones he had a part. In all his career as a lawyer he was distinguished for his accurate knowledge of adjudged cases—their reasons, their distinctions and their limitations, and no man had a better memory to retain, or more skill to use this knowledge. From this armory he drew at pleasure, battle-axe or scimeter, and wielded them as required with a strong or a cunning hand. I should do great injustice to Mr. Noxon's professional character, if I left it to be inferred that he was merely a real estate lawyer. His mind was equally ready or nearly so in other branches of his profession. He was quick-witted and ready as well as strong in the trial of cases. I well remember the story of his defense of a man prosecuted for libel, in calling a man a buttermilk doctor, as related to me by my old preceptor. The case was tried before Judge Van Ness. It was his habit to have a pitcher of buttermilk on the bench, and to drink it freely, after the manner of his Dutch progenitors. In summing up, Mr. Noxon said :

“It is no libel to call a man a buttermilk doctor. I, as well as his honor, the judge, have some such blood in our veins, and I should not feel insulted or libeled to be called a buttermilk lawyer, nor would he to be called a buttermilk judge.”

This provoked a laugh upon the plaintiff by the outsiders and jury, which was a pretty sure index of their verdict. He was master of invective, always honest, but sometimes carried to excess. A false and lying witness met with no mercy at his hands, and it required something more than ordinary cunning to hide a lie from his searching cross-examination. I think he delighted in hanging up the scalps of parties guilty of any kind of fraud, oppression, or overreaching, to dry in the smoke of his cabin. In a case he prosecuted for seduction, he quoted the lines, and it

is the only poetical quotation I remember to have heard from him :

“ Are there no lightnings in the vault of heaven,  
Red with uncommon wrath ”

to blast the seducer and destroyer of female innocence ? In important causes, Mr. Noxon was sure to be engaged. In such contests he met the renowned men of his profession ; the subtle and witty Collier, and Ben Johnson, as full of sense and learning as of drollery and good nature ; John C. Spencer, of unrivaled acuteness, and his no less able namesake—Joshua A. Spencer, whose very presence was a spell upon juries, hard to break ; Daniel Cady, a man whose clear and unclouded intellect illuminated and made plain the most obscure questions ; these, and such as these, were the antagonists he was accustomed to meet, and he delighted in the shock of such encounters. It was the meeting of flint and steel.

One of Mr. Noxon's noticeable points was his love of nature. He took the greatest delight in the garden. I think, in the hight of his fame as a lawyer, he was more gratified to raise a good seedling plum which should bear his name, than to win the weightiest cause in court. Pope never had any higher enjoyment in Binfield or Twickenham than he found in his orchard and garden at Green Point. He was a keen sportsman, and Izaak Walton never had a more zealous or admiring pupil.”

In the language of Judge Allen, — “ He was a great man, worthy of all admiration ; he was strong in his native sense and sound judgment ; strong in a knowledge of the law, in the rudiments and principles of which he was thoroughly rooted and grounded ; strong in his knowledge of human nature, and his ability and tact in the use of that knowledge ; strong in his self-reliance ; strong in his affections and social ties, drawing to himself with the cords of love, respect, and affection, all who came to know him ;

strong in his love of right and justice, truth and equity.”

The most remarkable feature shown by Mr. Noxon in the trial of causes, was the strength he appeared to gather in difficult cases. The greater the doubt upon the questions in controversy—the stronger the opposition brought to bear against him by distinguished counsel, the stronger, more beautiful and extraordinary were the efforts and talent exhibited by him in overthrowing his adversary. He seemed to excel himself when pressed hard by his opponent. He has gone to his rest, full of years and full of honors. His record is pure and untarnished in the courts, where he spent fifty years of his life in unraveling the intricacies of the law. His good name and fame are justly appreciated by the judge, the bar, the juries of the country, who have so long witnessed his masterly efforts in a profession he loved so well. His genial nature, and his social qualities, have left behind him many pleasing anecdotes, illustrating the happiest traits of his character. While such incidents reflect in some measure the character and disposition of the man, they rarely exhibit that true greatness which shines forth in that logical and close reasoning so necessary for a successful lawyer. We omit mention of the many anecdotes told, which would fill a volume; we say nothing of the political life of him who never sought to shine in the political field. Our task is done, when we point with pride and pleasure to the achievements and laurels won in the battle-field of legal science. His life and success give the warmest encouragement to the young man entering upon the profession, without means and without the benefit of a thorough education in the schools of the country. If his record is such as will awaken noble aspirations in the young man starting in the race for the highest honors in the legal profession, the admirers and friends of him whose life was so long

spared for usefulness will be most abundantly rewarded.

Mr. Noxon was accidentally killed by being run over by the cars, at Syracuse, on the afternoon of May 13th, 1869, having at the time reached the advanced age of eighty-one years.



## SOLOMON K. HAVEN.

Interesting interview between Governor Young and two applicants for a Clerkship in his Office.—One is very poorly Clad, the other fashionably Attired.—Mr. Young decides to accept the poor young Man, much to the surprise of a fashionable young Lady.—The young Man Commences his Studies.—A glance at his Career and his great Success.—This was Solomon K. Haven.—His Birth.—His want of early advantages.—The Common School.—Haven's Success as a Scholar.—A prize offered for the best Reader.—“Does Sol Haven think he can win the Prize?”—The Contest.—Haven Victorious.—Becomes a Teacher.—Decides to Study Law.—Enters Governor Young's Office.—Is Appointed Deputy Clerk of Livingston County, but continues his Law Studies.—His Popularity.—Offered the Office of County Clerk.—Magnanimous Reasons for his Refusal.—He leaves Geneseo and Enters the Office of Mark H. Sibley, at Canandaigua.—Character of Sibley.—Haven gains the Friendship of Francis Granger.—Haven Admitted to the Bar and visits Buffalo.—Decides to remain there.—Rents an office, arranges it, and tries a Lawsuit on the day he arrives at Buffalo.—His Success as a Lawyer. His Marriage.—Enters into Partnership with Honorable Millard Fillmore and Judge N. K. Hall.—Success and Character of the Firm.—Haven's subsequent Professional Career.—Often opposed by H. K. Smith, G. P. Barker, James Mullett, and other brilliant Lawyers.—How he Succeeded with them.—The Case of *Riall v. Pulsifer*.—Haven in danger of being overthrown by Mullett's brilliant Speech.—Laughable manner in which Defeat is turned into Victory.—Haven Elected to Congress.—His Re-election.—Congressional Career.—Character as a Politician.—As a Lawyer and Citizen.—Falls a Victim to his great Professional Labors.—His Death.

IN the autumn of 1828, Mr., afterwards Governor Young, who was then a young lawyer of rapidly increasing practice, desired to engage a young man who wrote a fair hand to enter his office as a student, to whom he proposed to pay a small salary. Not long after making this announcement, two young men applied to him at the same time for the position. One of them was coarsely and poorly clad, his appearance indicating the most indigent circumstances. But there was self-respect, self-reliance and a refinement

in his manner which showed that he was far above his circumstances. His clear bright eye beamed with intelligence and honest earnestness, while his countenance gave indubitable evidence of thought, intellect and determination.

The other young man was fashionably attired, everything about his dress being in strict conformity to the *beau monde*. While addressing Mr. Young, he tapped one of his highly polished boots, in the true Brummel style, with a light genteel walking stick, which he carried in his hand. He was easy, and even polished in his manner; but his polish was of the veneering order, put on for the occasion, and worn in a sort of jaunty manner. The look with which he regarded his plebeian competitor attested the supreme contempt which he entertained for him, and seemed to say, "Sir, there is no opportunity here for you;" it being understood that Mr. Young could accept but one of the applicants.

This interview took place at the residence of a gentleman where Mr. Young happened to be at the time. There were several persons present, among whom was Miss Harris, just from a fashionable boarding-school in Philadelphia, and who subsequently became Mrs. Young. She was a deeply interested spectator of this scene, and supposed, of course, that the fashionably dressed young man would be successful. But as Mr. Young himself was one of those who, with no adventitious advantages of birth or fortune, had won his way by the efforts of his own genius to the highest distinctions and honor, he never, even in his most brilliant career, failed to sympathize with struggling merit; never looked with disdain upon those who were at the foot of the ladder, up which he had successfully ascended. After a few moments' conversation with the candidates for his favor, he decided to accept the poorly clad applicant, much to the surprise of Miss Harris, who was then at an age when opinions are easily formed from appearances only.

“Why did you prefer him?” said she, after the young men withdrew.

“Because he has brains, and I doubt whether the other has; because he will succeed against all obstacles, and the other will fail with no obstacle in the way,” was the reply of Mr. Young.

A few days after this event, the young man commenced his studies. The road before him was long, rugged, and filled with many asperities; but the goal which he was seeking appeared in full view, thickly clustered with honors, and there ever came to him a consciousness, which throbbed through his whole being, and stimulated him to action, that he should reach this goal, and grasp the honor which surrounded it. In this consciousness of future success, he one day said to a young lady who is still living, “I am poor now, but in ten years I shall not be.” With heroic self-denial, and a stern devotion to his purpose, he pursued his studies. Now with Bracton, Coke, Bacon, Blackstone, and the great American expounders of jurisprudence, treading the labyrinths of the law, and now visiting past ages, and gathering round him sages and heroes, prophets and apostles, brave warriors and gifted bards, inhaling inspiration and intellectual vigor from statesmen, orators and legislators of the past, whose works are stamped with “the high-born majesty of mind.” Like Michael Angelo, in whose hands marble was flexible, he turned hard fortune into the tide of success, and struck enduring advantages from rocks against which others would have split.

Often he encountered purse-proud arrogance and frivolous gentility, creatures of an hour, swarmed into a useless life, in the sunshine of fortune, who derided his plain, unfashionable attire, his simple, unpretending life. But, like the eagle, whose dull, gray garb is out-dazzled by ephemeral insects and summer birds, while pluming himself for a flight immeasurably above their reach, he saw the devotees of fashion

buzz around him, and felt only silent contempt, conscious of his better destiny—conscious that struggles like his had scattered bright names along the pages of his country's history, as stars along the cloudless sky. And thus, with no regard for adverse circumstances, in anticipation of the future, he moved forward to the success that awaited him, to grasp the honors which he won, to be the center of many influences, to awaken through a large circle sentiments of esteem and affection, to exalt the standard and become the ornament of a profession to which the administration of public justice and the care of our civil institutions are peculiarly confided, to uphold and strengthen useful associations and institutions, to stand in the council of the nation the lawyer and the legislator, to win distinction amid accomplished and gifted competitors, to quiet the clamors of rivalry, hold in check the murmurs of jealousy, and finally to die amidst general, deep, unaffected grief. This was Solomon K. Haven.

He was born in the town of Butternuts, in the county of Otsego, New York, on the 20th day of September, 1809. His parents were in humble circumstances, and unable to give him any educational advantages, except those afforded by the common district school. These, however, young Haven improved with so much success that he soon became one of the best scholars in his district. Among his early acquirements was excellence in spelling; and before he was eleven years old he attained such perfection in this art that he could "spell down" any pupil of his age in school; and at length he was enabled to challenge the best speller, no matter how old or how much advanced. In addition to this, he became one of the best readers in the town. In those days the principal reading book was the old English Reader, compiled by Lindley Murray, which will long be remembered for the purity, elegance and taste with which the extracts it contained were written.

This pleasing acquirement he attained at a winter's school, taught by a clergyman named Gould, who was an accomplished reader and scholar.

Mr. Haven, in speaking of this school, thus described the manner in which Mr. Gould encouraged his pupils to read :

"He would," said Haven, "appoint evening schools, which all his more advanced pupils were requested to attend—each one being allowed to select some piece, and stand in the center of the room, before all the scholars, and read it. On certain evenings a piece was selected, and a prize offered by the teacher to the scholar who should read it in the most perfect manner. I recollect on one occasion the piece for which the prize was offered was *The Death of Altimont*, by Dr. Young. I had hitherto, owing to my youth, been debarred from the privilege of becoming a contestant. This time, however, I was permitted to enter the list; and it was to me a more important event than any other which has occurred to me in my whole life. My election to Congress was nothing compared to it. There were many advanced scholars who were to contend, and my prospects of success were not considered by my friends as very bright. There was one boy in the school, a trifle older than myself, the son of one of the wealthiest men in the district, who from this fact often assumed a domineering manner over the boys, particularly over me. He too was one of the contestants for the prize. I remember perfectly well the supercilious remark he made when he heard that I was to be a contestant.

"'I wonder,' said he, 'if Sol Haven thinks there is any chance for him to win the prize. He'll learn that he can't contend with me in this matter.'

"I made no reply, but every day I repaired with my book to the garret in our house, and there I read and re-read the chapter, particularly the following verse, which has never escaped my memory :

"'If this is a man of pleasure, what is a man of



pain? How quick, how total is the transit of such persons! in what a dismal gloom they sit for ever! How short, alas! the day of their rejoicing! For a moment they glitter—they dazzle! In a moment, where are they? Oblivion covers their memories. Ah! would it did. Infamy snatches them from oblivion. In the long living annals of infamy their triumphs are recorded. Thy sufferings, poor Altimont, still bleed in the bosom of thy heart-stricken friend; for Altimont had a friend. He might have had means. His transient morning might have been the dawn of an immortal day,' &c.

“As the evening approached for the trial, I felt a sort of secret confidence that I was to succeed. The evening came at last. The school house was filled with spectators, who gathered there to witness the contest. It so happened that it became my turn to read next after the boy who had spoken so sneeringly of me. Oh! how I watched every word that fell from his lips. Never at the bar, in the most exciting case in which I ever was engaged, did I watch my opponent more narrowly than I did that boy. When he finished, I believed that I could exceed him; and with this conviction, I took the floor. I saw nothing, cared for nothing, thought of nothing but the chapter before me. My heart swelled with the proud consciousness of superiority.

“Carefully, slowly, observing every stop, every modulation and inflexion, I proceeded; and when I closed, a burst of applause followed, and I knew that I was victorious—that the prize was mine.

“To the success of that evening I am indebted for all that I am—all that I expect to be—for it stimulated in me not only ambition, but a confidence in my ability to succeed in the world, which never deserted me.”

Such was Mr. Haven in his early youth. By hard study and great energy of character he prepared himself for a common school teacher. Though teaching was not an occupation which exactly suited his taste,

yet he was considered a successful teacher, always highly valued by the children. He was punctual and faithful to his employers; and governed his school with a mild yet perfect supremacy. No such thing as disobedience was thought of, and during the first two years of his teaching he only chastised one boy, who had committed some crime which demanded a severe punishment, and Haven gave it to him. The next evening, as the teacher was returning to his boarding-house, the father of the boy met him in the road, and in great anger asked Haven why he whipped his son.

“Because he deserved it,” was the reply.

“Well, I’ve come to thrash you to pay for it,” said the man.

“Do you think you can do it?”

“Yes, sir, I do, in just one minute,” was the answer.

“Very well, try it,” said the teacher.

“I’ll teach you, sir, to whip my boy in the way you did.”

The man was somewhat heavier and apparently stronger than Haven, but he did not possess his agility nor his muscular energy. Suiting his actions to his words, he sprang at Haven, and directed a heavy blow at his face. The next instant the assailant lay on his back in the middle of the road, with Haven’s knees on his breast. For a moment the man struggled to release himself from his unpleasant position, but he was held as in a vise; and at length he ceased his efforts to escape.

“What do you propose to do with me?” said the man, at length.

“I propose to hold you here until you will promise me, on the honor of a man, that you will behave yourself, and then I propose to let you up,” said Haven.

“Well, I ’spose I might as well promise,” said the man.

“So I am to understand that you make me that promise, do I,” said Haven.

“Certainly,” said the man ; and he was released.

This encounter had a tendency to cool his ire ; and after talking the matter over a while, he acknowledged that the boy deserved the whipping, and that he himself deserved being thrown on his back in the street. The next morning the boy came to school, and all trouble ended.

During the winter and summer of 1827 Mr. Haven taught school in the town of Bristol, in the county of Ontario. He was then eighteen years of age. About this time he decided to enter the legal profession. Such was the characteristic firmness of his nature, that, having once come to a decision, that decision was irrevocable ; and, as we have seen, he directed all his energies to the attainment of this object.

In the fall of 1828 he visited a friend residing at Geneseo. Pleased with that beautiful village, he decided to remain and pursue his legal studies there. From his friend’s description of Mr. Young, he was exceedingly desirous to secure a place in his office. Accordingly, he applied to that gentleman for a studentship in his office, and with what result already appears.

He soon succeeded in gaining the confidence of his preceptor, who in various ways aided him to sustain himself while pursuing his studies.

Although he was very poor, yet his studious habits, his irreproachable character, his industry and unassuming manners gained him many friends at Geneseo, all of whom felt confident that he had a bright future before him.

In September, 1832, he was appointed deputy clerk of the county of Livingston. So acceptable were his services to Mr. Bond, the clerk, and so popular did he become with the people, that he continued in this position until January, 1835. During a large part of this time, owing to the ill health of the clerk, the entire duties of the office devolved upon him. He was

in his office from 9 o'clock in the morning until 12, and from 1 o'clock until 5 in the afternoon; and thus two years passed away. During Mr. Haven's term he made the acquaintance of many leading citizens of Livingston county, with whom he had become very popular, and he could easily have secured the office of county clerk for himself; but, being aware that Mr. Bond desired it again, he refused to accept the nomination. This one circumstance exhibits the high-toned generosity of Mr. Haven's nature; and it was fully appreciated by Mr. Bond and all his friends. He continued carefully and laboriously to discharge the duties of deputy through Mr. Bond's second term.

While thus engaged, he continued his legal studies. As soon as his duties in the office were discharged for the day, he returned to his law books, which afforded him recreation and delight. To him there was nothing which had so deep a meaning as *law*. Like Hooker, he saw in it that which vindicated the harmonious necessity of the universe. To such a mind as his, there could be no rest until he fathomed its depths—inquired into "its fundamental grounds and original causes."

That he read with close and critical observance is evident from the manner in which, as a practitioner, he dealt with abstract legal principles, and hence he was always able to give a cogent reason for the position which he assumed.

During these days of study, he did not forget to cultivate his oratorical powers. With a view to improvement in this respect, he subjected himself to the most persevering and laborious process of private study, being accustomed to debate imaginary questions alone with as much earnestness as before a large audience.

It is related of Curran that he was in the habit of declaiming in solitude, and that the authors from whom he chiefly borrowed the matter of these solitary

declamations were Junius and Lord Bolingbroke, but the poet he most passionately admired was Thomson. He occasionally declaimed from Milton, but in his maturer age came to think less of that great poet. It is also said that one of his favorite exercises was the funeral oration of Antony over the body of Cæsar, as given by Shakespeare; the frequent recitation of which he used to recommend to his young friends at the bar to the latest period of his life.

Like Curran, Haven used to seek some solitary place in company with a young friend who acted in the double capacity of audience and critic. There he would address an imaginary jury, with close adherence to professional peculiarities and the customs of the bar, or rehearse some extract from his favorite authors. The selections which he was most accustomed to declaim were Hamlet's Soliloquy on the Ills of Life; Othello's Defense before the Venetian Senate; the Speech of Cicero against Verres, and Portia's Address to Shylock, in which she exhorts him to exercise "the quality of mercy."

In this way, Mr. Haven succeeded in cultivating some oratorical accomplishments, though he never became what might be called an accomplished speaker. Though he was always attractive, and gained the attention of his auditors, he did this more by the force of reason than by the blandishments of the perfect orator.

There was but little imagination in the mental organization of Mr. Haven, and he took a practical view of the sentiments and utterances of his authors, regarding them with the eye of a philosopher, instead of "the frenzy of the poet."

He left the clerk's office early in 1835; after that, he became a resident of Canandaigua, and a student in the office of Mr. Sibley. While there, he was fortunate in gaining the friendship of the late Francis Granger, who discovered in the young man those traits which had so strongly recommended him



to Governor Young. Mr. Granger took a deep interest in his welfare, which was attested by many instances of friendly assistance and aid, which from his position in life, were of inestimable value to Haven. Mr. Sibley, too, regarded him with much favor; in fact, he was singularly endowed with the faculty of making friends, and "binding them to him with hooks of steel," but it cannot be denied that he possessed those qualities which sometimes beget enmity.

While at Canandaigua he was admitted to the bar; this took place in July, 1835. He remained with Mr. Sibley nearly a year after this, perfecting himself in legal knowledge and learning the details of practice. Mr. Sibley was then one of the ablest advocates in the State. The supremacy of his eloquence at the bar and in the popular assembly was universally acknowledged. His form was manly and commanding, his voice full, rich, musical, and vibrated to the very heart of the listener, while his expressive eye kindled in unison with his theme. He knew how to blend the natural language of genius and impassioned feeling with judicious sentiments and correct reasoning, uniting the rhetoric and logic of Fox with the brilliancy of Phillips. In his private life and character, he was high-toned, generous, and noble.

Following the advice of Mr. Granger, Mr. Haven decided to make Buffalo his place of residence and the theater of his professional exertions. Accordingly, in July, 1836, he visited that city, carrying with him favorable letters of introduction from Mr. Granger and Mr. Sibley to George G. Babcock, an eminent lawyer of Buffalo. On his arrival, he called on Mr. Babcock, entered into conversation with him upon professional topics, and just before leaving the office he presented his letters of introduction; this was early in the day. He immediately found an office, rented and arranged it, and tried a lawsuit of considerable

importance before a magistrate, and all this before he had been in Buffalo one day.

With such abilities—such indomitable energy, he could not long occupy a subordinate place at the Buffalo bar, although at this time it was distinguished for its brilliant legal talent. As a distinguished member of the bar remarked after the death of Haven:

“He was of all the lawyers at the Erie county bar the hardest to beat. In everything he went by the most direct route to the point at which he was aiming. In one of my first causes he was my opponent. I was then city attorney, having but recently been elected, and the action was one in which the city was concerned. He compelled me to prove on the trial the act incorporating the city, and he even raised a knotty question as to the necessity of my authenticating the provisions of the Revised Statutes which were applicable to the case. There was always something about him to cause his opponent to dread a surprise, and yet no one could ever surprise him; finally, few men can accomplish as much as Haven did in so short a life.”

Soon after becoming a resident of Buffalo, he was united in marriage to Miss Cole, a young lady of many excellent endowments, and a daughter of Doctor Cole, one of the earliest physicians of Buffalo, an esteemed and highly reputable citizen. Mrs. Haven and her father are still living.

In March, 1842, Mr. Haven was elected mayor of Buffalo. He brought to this office those singular executive abilities which distinguished him as a lawyer; while his urbanity, native sense of right, and just appreciation of his duties, rendered his administration successful and popular.

After he had been at Buffalo some years and had gained a high reputation as a lawyer, he entered into partnership with Hon. Millard Fillmore and Judge N. K. Hall, forming the celebrated firm of Fillmore, Hall & Haven.

As has been said of Mr. Fillmore in another part of this work, he possessed in a high degree, weight and strength of intellect, power of discovering what is prominent and commanding in a subject, and of throwing lesser matters into the background; thus securing unity and distinctness of impressions, and as a consequence, a powerful influence over his hearers. His arguments were always remarkable for the soundness of the principles on which they were based. He was the untiring, ever watchful sentinel who guarded his subject, and protected every avenue through which an opponent could approach it. These characteristics distinguished his legislative speeches, and tended to strengthen those able, learned and dignified State papers which emanated from his pen in those days, when, as an American statesman, he stood conspicuously before his country and the world.

As a lawyer, Judge Hall was sagacious, learned and profound, making no pretension to showy and brilliant attributes, always relying more upon the soundness and strength of his positions and arguments than upon quick and rapid originality and sparkling reason. If these qualities are useful in the lawyer, they are inestimable in the judge, and, united with his natural patience and diligence and the clearness of his perceptions, render him an eminent and sagacious judicial officer.

Such were the men with whom Solomon K. Haven became associated in the legal profession. The firm continued to exist for several years, with the most brilliant success. Each of its members attained to high honors—one of them to the highest in the gift of the Republic; one to a distinguished judicial position; the third to a seat in the councils of the nation, which he occupied with honor to himself and to the people whom he represented.

As has already been remarked, Mr. Haven cultivated to a considerable extent his oratorical powers,

and yet he did not attempt to exercise many of its graces. The character of his legal arguments and speeches was strength, power and activity of thought. He always seized upon the strongest point, and left it for no other.

He often encountered the brilliant and impressive oratory of H. K. Smith, George P. Barker, James Mullett, and others of equal power, whom he met at the circuits in the surrounding counties. There was a class of cases in which either of those eminent lawyers possessed a decided advantage over him, by the powerful appeals to the jury which they were enabled to make; but such was his force of argument, such was the perfect preparation of his cases, such his keen and well-planned tactics, the facility and rapidity with which his mental powers were exerted, that he usually proved their equal even in these contests. No circumstance which tended to his advantage was ever overlooked. He had a happy faculty of seizing upon remote circumstances, and rendering them subservient to his purpose; and he perfectly understood when and how to seize "the vantage ground of the contest." His want of burning eloquence was further compensated by a sharp and pungent satire, which no man could wield with more effect than he.

During the trial of an important cause at Ellicottville, a circumstance occurred, which exhibited the superior qualities of Mr. Haven as a tactician at the bar, the gravity with which he used his satirical powers, and the facility with which he seized "momentary advantages."

The action was brought by a Miss Riall against one Pulsifer, a wealthy farmer, for carelessly and negligently driving a lumber wagon, drawn by a span of horses, against her carriage, in which she was traveling on the highway. The carriage was overturned, badly damaged, and the lady considerably injured. The defendant insisted that the accident was the result



of the plaintiff's carelessness, and therefore he refused to make any amends for the damages which she had sustained.

The late Judge Mullett appeared for the lady, and Mr. Haven for the defendant.

The plaintiff was a maiden lady, thirty-six years of age, or thereabouts, who, prompted by a desire to retain her youthful beauty, was in the habit of tinting her cheeks with rouge. She usually did this, however, in such an artistic manner that nature was faithfully imitated, and in some instances quite outdone. At the trial she appeared by the side of her counsel, with cheeks that vied with the richest carnation. So decidedly youthful was their color, that an imaginative mind might easily have taken her for Hebe invoking the protection of the laws. It is true, that a connoisseur might have detected a surplus of the rare and delicate coloring on her cheeks, because she did not on this occasion spread it with her usual artistic skill. But she was surrounded by those who, even if they possessed the power of criticism in such matters, were decidedly too gallant to exercise it; and to those at a little distance, the lady passed for a very beautiful and youthful girl; and Mr. Haven saw the unpleasant and difficult duty of trying a cause against a pretty woman. Like all lawyers who have been similarly situated, he was well aware that this circumstance alone would operate against his client, and he feared the result of the trial; but believing that he had a strong defense—that the law was with him—he hoped to triumph over sympathy.

The trial proceeded. Judge Mullett presented his case with that masterly ability for which he was so justly celebrated. But he found in Haven a cool, collected, and wary opponent, one who, without any glow of imagination, was powerful in his knowledge of the law and the rules of evidence, and one who made up in skill what he lacked in experience.

At length the counsel for the plaintiff rested his



case, and Haven promptly moved for a nonsuit, on the ground that it appeared from the evidence of the plaintiff that the injuries which she received resulted from her own carelessness in not continuing in that part of the highway which the law assigned to her. This motion brought on a closely contested legal argument, for in those days, lengthy discussions were permitted at the circuit.

In resisting the motion for a nonsuit, Judge Mullett, after discussing the legal questions which it involved, in order to bring the facts within the law as he construed it, alluded in eloquent and pathetic language to the circumstances of the case—to the injuries and sufferings of his client, and to all those incidents which in cases of this nature arouse sympathy, and which, though addressed to the judge, always have their effect upon the jury. His address visibly affected his client; who, to hide her emotions and her tears, was compelled to bury her face in her handkerchief.

Haven felt that his client's case was suffering under the burning language of his opponent, which he saw was affecting the jury and even the judge, while it created strong sympathy for the plaintiff among the spectators and the bar, and he began to feel that notwithstanding all his efforts, his case was to be lost in the feeling for the plaintiff which her counsel was creating. For him to attempt any answer to such a storm of eloquence was quite out of the question, and he began to prepare for the worst. But it happened that just before Mullett closed his argument, Haven made a discovery which he turned to his advantage, and which neutralized all of his opponent's eloquence.

After Mr. Mullett concluded, Haven, in closing the argument of the motion, said :

“If I am not mistaken in the authorities which I have cited, and in the facts which the evidence has adduced, this motion should prevail; for, although the law is provident of remedies for injuries to person, property, and character, yet it requires, as has been

shown by numerous authorities, that he who seeks indemnity against the careless or negligent acts of another, must himself be free from carelessness and negligence. But my learned friend on the other side, has made, in opposition to this motion, one of the ablest and most eloquent arguments to which I have ever listened—an argument of surpassing wisdom and power. Though I believe there is very little upon which to found his thrilling appeal to your honor's sympathy, yet I must admit that your honor, the bar, the jury, as well as myself, have been deeply affected by it; but more than this, his appeal has had a powerful—a strange effect upon his client; it has even changed her so that she will not know her face when she beholds it in her mirror."

At these words, the lady suddenly removed her handkerchief from her face, which had remained there since the pathetic appeal of her counsel; and, sure enough, there was a change, and such a change! The flush of youth, the glow of Hebe, the bewitching tints had all fled. The tears which she had copiously shed, in coursing down her cheeks, removed the paint in places, leaving long and ghastly streaks of red and white, mingled with spots of such variegated hues, that one might have supposed that an amateur painter had tried his brushes on her face, not forgetting her nose in the operation. "In a moment, in the twinkling of an eye," the effect of Mr. Mullett's eloquence was dispelled, and amid the half-suppressed laughter of the bar, jurors, and spectators, Haven, with the most imperturbable gravity, took his seat. One of the jurors, however, in attempting to suppress his laughter, had seized his nose between his thumb and finger, and while thus holding that organ, accidentally relaxed his grasp upon it, and a noise something like the toot of an old-fashioned dinner horn ensued. The effect of this can easily be conceived; it operated so powerfully upon the risibles of all in the court room, including Mr. Mullett himself, that a

burst of laughter followed, which, for a short time, baffled the attempts of the officers to suppress.

The motion for a nonsuit was denied, and Haven wisely decided to introduce no evidence himself, but to submit the case to the jury upon the testimony of the plaintiff, thus giving his opponent no time to recover from the effects of the circumstances which had so emphatically destroyed his hold upon the sympathy of the jury, under the conviction that this was all he had to fear in the case, and believing that Mullett could not again gain the advantage which he had lost; and in this he was correct. Both counsel addressed the jurors. Haven, with his close, terse and pointed logic, was now enabled to gain and hold the attention of the jury. Mullett contended with force and power, but it was evident that his strength was not now in the case. The jury retired under the charge of the judge, and, after long absence, returned with a verdict for the defendant.

“Haven,” said Mullett, when the trial was over, “you managed that paint on my client’s face admirably.”

In the autumn of 1849, Mr. Haven was elected a representative from his Congressional district, to the thirty-second Congress, where he soon distinguished himself as an active, industrious and influential member, commanding the respect and esteem of his fellow representatives and the entire confidence of his constituency. He continued to represent his district in this body until the close of the extra session of the thirty-fourth Congress, August 21st, 1856.

It was his fortune to enter Congress at that period in our history when the question of slavery was all-absorbing throughout the nation, when it entered into all party organizations, and exhibited itself even in religious denominations; engendering those fierce discussions which were the prelude to the “clash of arms.” Though the results of those dis-

cussions are too fresh in the minds of the people to warrant any recurrence to them here, yet by the student of history, the shifting scenes which led to our civil war will ever be regarded with peculiar interest. They followed each other like those events in England which commenced in 1629 with the struggle of the popular party against the encroachments of high prerogative upon the rights of the people, leading to their appeal to a higher law than any human enactment—the unwritten law of justice and reciprocal equity, teaching that “all men are endowed with certain inalienable rights,” and which culminated in the civil war of 1642. Thus “history repeats itself.”

The records of Congress during the years in which Mr. Haven had a seat in that body, are sufficient evidence of his zeal in behalf of the rights of his constituents, and of the large amount of work which engaged his attention.

In politics, Mr. Haven was a Whig; moderate though firm in the expression of his opinions. He sustained the compromise measures of 1850, with many other eminent patriots of that period, under the firm conviction that they would end the agitation of a question fraught with so much danger and excitement. One of his first speeches in Congress exhibits the strong confidence which he felt in the ultimate harmonious settlement of the question of slavery. That speech abounds in strong and eloquently expressed though mistaken views of the turn which the Southern leaders would give to the slave question under the compromise act. When the Whig party in the State was divided into the factions of Woolly Heads and Silver Grays, or Conservative and Radical divisions, Mr. Haven united his fortunes with the latter. Before the expiration of his first term in Congress, he was re-elected, and he commenced his second Congressional term with the opening of Mr. Pierce's administration. The House was organized by the choice of Linn Boyd for speaker. Soon after



the commencement of this session, Mr. A. C. Dodge, of Iowa, submitted to the Senate a bill to organize the Territory of Nebraska, which was to contain all the region lying westward of Missouri and Iowa. The great discussion which took place in the Senate upon the introduction of this bill, and its various amendments, between Messrs. Sumner, Douglass, Cass, Dixon, and other prominent Senators, was reiterated in the House, where Mr. Haven participated in the contest, ably sustaining the position which the Whig party had taken in the question, in several speeches which he delivered, and by his incessant labors where ever he could exert his influence.

At the close of the thirty-third Congress, Mr. Haven desired to return to the practice of his profession and abandon his Congressional labors, but so acceptably had he discharged his duties as a representative, that his party insisted upon his renomination, and he reluctantly became a candidate for a third term. He was elected, and once more returned to his labors as one of the National Legislature. The opening of the thirty-fourth Congress was rendered memorable by a contest for the election of a speaker, so obstinately contested that it may well be regarded as the precursor of that bloody struggle which a few years later distracted the nation.

The Whig party had for some time been dissolved, or rather merged in a new and powerful organization—the Republican party—which, from its origin, had many elements of strength. It continued to rapidly increase until it could confidently demand the control of the House of Representatives, and the contest for speaker resulted in the choice of Mr. Banks, an eminent Republican.

In this struggle, Mr. Haven united with the friends of Mr. Banks. His labors during this season were very much confined to the committee room, though he participated in many of the debates which occurred on the floor of the House.



The political career of Mr. Haven is so intimately connected with those party differences not yet entirely forgotten, that to enter into a consideration of it would be but a recurrence to a controversy still fresh in the minds of the people. It is sufficient to say, that he was popular with his party in and out of Congress, that in his Congressional duties he increased his popularity and developed many abilities as a legislator. That he had his faults and frailties—his errors of omission and commission—is not to be denied.

During the life of a prominent politician, his name is usually a watchword of faction, and the constant theme for both eulogy and invective. As has been justly remarked, the characters of such men are seldom properly estimated, even by posterity, and they often continue to be seen through the mists which faction has raised around them; sometimes magnified into heroes and sages, sometimes quite as unjustly diminished into provincial demagogues and petty intriguers. So great a portion of their reputation arises from adventitious circumstances, from situation, titles, public honors, political zeal, or party management, that it is at least difficult to separate the substance from the trappings which invest it.

Mr. Haven was not a profligate politician—not a demagogue in any sense of the word, and when placed in comparison “with those *simulars* of patriotism, the politicians of expediency and intrigue,” his abilities, his skill, his direct and positive nature, his sincerity, his honesty, and his consistency of character, more than compensate for the errors with which he was charged.

Mr. Haven was one of those lawyers who insensibly gain the confidence of their brethren of the bar. “The position which he won by his well-directed efforts was never lost by inattention or neglect. In his contests at the bar, he was often defeated, but never unprepared. Promptitude was the great trait in his personal dealings with his clients, and with his causes—

finally with every one. He possessed wonderful power in economizing time, a ready control of all his business. His advocacy of whatever cause he espoused, was always able and effective. As his examinations were very thorough, and his opinions consequently well considered, he never willingly relinquished their vindication, until the final and authoritative judgment was pronounced upon them."

In all the relations of life, he was plain and unpretending. Nothing annoyed him so much as undue display and pomp. It is related of him, that after having decided to erect a residence, he said to his father-in-law, Dr. Cole, who had then retired from the duties of his profession: "I am too much engaged to give the building of my house any attention whatever. I wish you to look to it and give the necessary directions. I have none to give, excepting this: see that no reasonable expense is spared in rendering the building substantial, convenient, and comfortable. Avoid all display. Let it be constructed with good taste; but plain and simple in its architecture."

Few men ever possessed the unwearied industry of Mr. Haven. He never suspended his labors, never sought rest, and never allowed himself any relaxation from his professional toil. He loved labor for its own sake, and, like Nicholas Hill, he immolated himself on the altar of his professional ambition. He died on the 24th day of December, 1861, in the fifty-third year of his age.

His career is a rare example to young men who propose to enter the legal profession; teaching them that great difficulties can be easily overcome, that they will yield to enterprise, sagacity, and perseverance, and that the road to professional distinction is open to all.

## MARCUS T. REYNOLDS.

A Native of Montgomery County.—A Student at Canajoharie Academy.—Singular Manner in which he Prosecuted the Study of Latin.—His Progress in this Study.—The Surprise of the Principal.—Reynolds Enters Union College.—His Career in College.—Graduated.—Commences the Study of Law with M. B. Hildreth.—The Contemporaries of Mr. Hildreth.—The Advantages of Reynolds as a Law Student.—He is Admitted to the Bar.—Names of the eminent Lawyers who were admitted with him.—Commences Practice at Johnstown.—His Character as a Lawyer.—As a Speaker at the Bar.—His Versatile Powers illustrated by two Important Causes.—Manner in which he Carried his Causes.—Meets with an Accident which causes the Loss of his Leg.—His Courageous Reply to the Surgeon.—His Manner of Conducting Causes after the Loss of his Leg.—His Powers of Sarcasm, and his Love of Pleasantry.—The latter quality illustrated by an Amusing Anecdote.—Personal Appearance of Mr. Reynolds.—Professional Character in his more Advanced Years.—His Dislike of Politics.—His Reply to the Committee who tendered him the Office of Member of Congress.—Reynolds, STEVENS and Hill, as Lawyers from 1837 down to the Adoption of the Code.—Character of Samuel Stevens.—His Personal Appearance.—As a Politician.—Often Engaged with Mr. Reynolds.—The Position of the Two, in their earlier Practice at the Albany Bar, and the Bar of other Counties.—The Appearance of either of them at the Schenectady Bar an Intellectual Treat to the Students of Union College.—Mr. Reynolds Retires from the Bar and from Society.—Loss of his Mental Powers.—His Death.

MARCUS T. REYNOLDS was a native of Florida, in Montgomery county, New York, where he was born on the 22nd day of December, 1788. When he was ten years of age, he was placed in a very respectable high school at Canajoharie, where he remained three years. His father, desiring that he should first be thoroughly instructed in the English branches, directed the principal not to permit him to commence the study of Latin until after the expiration of one year at least.

It was, however, the ambition of young Reynolds to commence the study of that language at once; but as the teacher adhered inflexibly to the instructions of the father, he would not listen to the son. Determined,

however, to prosecute his favorite study, he procured the necessary books, and while the other boys were engaged in play, he devoted himself to them with unwearied diligence. One of the more advanced students in the institution consented to hear his recitations and give him the necessary instruction. In this way he soon mastered the Latin Grammar, and advanced as far as the three first books of Virgil. One day, as the principal was passing by the room of young Reynolds, he caught the sound of a voice apparently engaged in reading Latin. He listened; the voice resembled that of young Reynolds, and yet he thought it could not be possible, for the young student did not read Latin, as he believed. At last, prompted by his curiosity, he entered the room, and sure enough, there was the boy, with Virgil opened before him, so intent upon his reading that he did not notice the entrance of his teacher.

“What does this mean, Marcus?” he asked.

“What are you reading?”

“I am reading Virgil,” was the answer.

“Reading Virgil, sir! Where did you learn to read Virgil, pray?”

“Here, in your school,” said Reynolds.

The principal then directed him to continue his reading; the boy complied, reading two or three pages very readily and correctly.

“This is surprising,” said the teacher. “Have you recited to any one?”

“Yes, I have recited to George Powell.”

“Well, sir, you shall take your place in the class now, and I will write to your father and acquaint him of your progress.”

This circumstance represents a prominent feature in the character of Mr. Reynolds; it exhibits that strong determination, that concentration of purpose, and that intellectual superiority, which exemplified themselves in every phase of his after life.

At length his preparatory course was completed,

but he was deterred from entering college for some time by ill health. Gaining his health, however, he entered Union, where he was characterized by the same love of study and powers of application which indicated his abilities during his preparatory course. Several literary productions written by him while in college gave evidence of the vigor, activity and strength of his intellect. He was continually storing his mind with valuable information, and such were the powers of his memory that a "literary production composed, but not written, and laid up in his mind, was ready to be summoned to use at any future time, and could be recalled after a long interval, with hardly the loss of an idea that entered into the original structure." This unusual strength and tenacity of memory was exhibited at the bar in referring to adjudicated cases and elemental texts.

While in college he developed those elocutionary talents, that keen and sparkling wit which rendered him so pleasing and yet so powerful as an advocate.

In the year 1808, he was graduated, standing second in his class. Immediately after this event, he commenced the study of law in the office of the late Attorney-General M. B. Hildreth, at Johnstown, New York. Mr. Hildreth was a lawyer of many rare and valuable qualifications. He was a cotemporary of the late Daniel Cady, W. W. Van Ness, Thomas Addis Emmett, D. C. Colden and T. R. Gold.

It was the rare fortune of young Reynolds while a student, to witness intellectual contests between men of such mental powers and varied acquirements as those great leaders of the New York bar. He was called to the bar in the year 1811. About this time Addison Gardner, Samuel Stevens, Benjamin F. Butler, John A. Collier, Charles O'Connor, William H. Seward, Ogden Hoffman and A. C. Page were also admitted to the bar.

Mr. Reynolds commenced his practice at Johns-



town. He was compelled to contend with the learned, high-toned and gifted Cady, a rival who shed luster upon an opponent. As the eloquent H. K. Smith, who sat at his feet as a student, drew from him those inspirations which rendered him so gifted, so Marcus T. Reynolds, as an antagonist, caught from him the same intellectual fires.

Mr. Reynolds continued to practice at Johnstown with distinguished success until the year 1828, when he removed to Albany, where he entered on an almost unprecedentedly brilliant professional career. Indeed, for many years, the history of that career is the history of the Supreme Court and the Court for the Correction of Errors. During a period of thirty-five years, he appeared as one of the contesting counsel in as many of the cases adjudicated in those courts, as any other lawyer that has ever appeared at the New York State bar.

He was one of the most consummate advocates of his day. His rich humor, his argumentative powers, his singularly rich and copious diction, his mind, stored, yet not crowded, with subjects of classical and fanciful illustration, enabled him to bring to the bar many solid and shining accomplishments.

Though he possessed considerable imagination, though, if the occasion required, he could pass from prose to verse, from history to poetry, and from poetry to the black letter of the law with great facility, yet few would observe this versatility in his speeches at the bar. He rarely appealed to the passions of the jury, relying rather upon the law and facts in the case, soberly demonstrated by the intuitive power of common sense. He had none of that alliteration and antithesis—heated passion and inflated metaphors that burst the silken covering of sense, and then glitter in empty space.

It is related of the late Mr. Justice Talfourd, that while at the bar, he occasionally ascended into high sentimental regions, quite out of the reach and under-

standing of the jury. This was illustrated in his speech in behalf of Moxon, who was prosecuted for publishing the works of Shelley.

“When the time arrived,” says his biographer, “he let off a series of rounded rhetorical paragraphs which flew over the heads of the jury, bewildering, instead of guiding or convincing them; and a verdict of guilty was the mortifying result.”

The legal speeches of Mr. Reynolds were natural, easy, replete with argument, never too artificial and *recherche*. His gestures were very few, generally with his right arm and forefinger, occasionally dropping the palm of his left hand upon the table, if one was before him, if not, he balanced it before him in an easy, natural manner.

He had the faculty of passing from “grave to gay, from lively to severe,” with surprising facility. This is illustrated by his arguments in cases like *Mabee v. Peck*, and in cases like *The People v. Lamprey*. So widely did these intellectual efforts differ from each other, that a stranger would naturally have believed them to be the productions of different minds. The former case involved the consideration of mere abstract questions of law, and his argument abounded in nothing but reason, relieved by no lucid narration—no appeal to the feelings—no address to the imagination, and yet it was an intellectual triumph: those who listened to him could hardly think it possible for a feeling of pathos, sympathy or pleasantry ever to enter his bosom, so thoroughly prosaic was his speech.

Lamprey was tried for the murder of his own nephew. There were many circumstances in the case which appealed strongly to sympathy, and Mr. Reynolds interposed a powerful and successful defense, founded, not only upon the facts, but upon grave and intricate questions of law. His address to the jury was an inimitable specimen of legal oratory. It was often enlivened by momentary displays of wit and humor; it abounded in exquisitely wrought passages.

in which pathos and argument were interfused. Even on the discussion of the legal questions in this case, "he cast the playful hues of his fancy," so that it was difficult to determine whether at the bar he was the giant or the magician—Briareus or Prospero.

He carried his cases by being thoroughly imbued with them himself, and then by a clear and well defined statement to court and jury, imparting the impression that he had no doubt as to the right of his case. Before a jury he had a sort of magnetic power, by which he photographed his own ideas and reasons upon the minds of the jury.

Many years before his death he was thrown from a horse; the fall producing an injury to one of his kneepans, of such a serious character that amputation became necessary. Immediately after the accident he was taken into a store, and the wound examined by one of the most skillful surgeons in Albany; who became convinced that amputation must inevitably follow, and he so informed the sufferer, stating further, that, perhaps, it had better be done on the following day.

"I wish you to proceed instantly, without any delay. I cannot have the matter upon my mind," said Mr. Reynolds.

The surgeon obeyed. This was before chloroform was used by surgeons, but Mr. Reynolds submitted to the operation without a groan.

After the loss of his leg, he generally conducted his causes sitting. Whenever it became necessary for him to address the court or jury, he would invariably make a motion as though he was about to stand upon his feet, and the court never failed to say, "Please keep your seat, Mr. Reynolds."

It was pleasing to observe the gratifying amenities between him and the bench and the bar; every attention and assistance was proffered him which a delicate sense and appreciation of his misfortune could suggest.

Mr. Reynolds, when he chose to exercise them, possessed great powers of sarcasm, and at times one of his deepest inspirations was scorn; hence he could awaken terror and shame as easily as he could melt, agitate, and arouse. His love of pleasantry never deserted him, but his manner when humorous was apparently cold and emotionless. An anecdote illustrative of this is related by Charles Edwards, Esq., in his "Pleasantries about Courts, &c."

"In a case pending before the chancellor, wherein Mr. Reynolds was counsel for one of the parties, a point had been raised before the court, that the wife of a party was not brought in, and he had granted an order staying all proceedings until that was done. But notwithstanding this, Reynolds appeared in court and was about to move in the suit, when his opponent with great warmth expressed his surprise, and objected to any proceedings until the lady was made a party. The chancellor promptly approved of this objection. Mr. Reynolds observed that he was retained to act for his client, and he believed he could show the court that he ought to be allowed to proceed. But the chancellor very peremptorily informed him that he could not proceed. Nevertheless, Reynolds, in his cold and passionless manner, observed that he was not only retained, but—something unusual—had been paid his fees in advance, and he really must be allowed to go on; still insisting that he could convince the court why he ought to be permitted to go on. But the chancellor again checked him, this time rather tartly, and as often as he tried to get in one word, the court uttered two, by way of opposition.

"'Well,' said Reynolds at length, 'if I cannot be allowed to go on, I must move the court for an order putting the cause over until my client can marry a wife and bring her into court.'

"'What,' said the chancellor, 'is he not married?'

“‘No sir.’

“‘Why, then, was this order made?’

“‘He was married then, but if your honor please, his wife died since.’

“‘Why did you not say so at first, Mr. Reynolds?’

“‘Because your honor would not give me the opportunity.’”

There was at times a playfulness in his nature that would not permit him to forego a good joke, and any little pleasantry which occurred at the bar, always amused him. It is related of him that upon one occasion, he had noticed an old cause for argument at a special term held by Judge Nelson. His opponent was Mr. Colyer. At the appointed time, the case was called and promptly moved by Mr. Reynolds, but Colyer declared that he was not ready to proceed; the former however, gravely insisted upon proceeding with the argument. “This case has laid a long time, your honor. Something over a year ago I made some points in it, but not an extended brief, and I have not looked at the papers since.” While making these remarks his papers lay on a table by his side a little out of the range of his vision, and Reynolds adroitly drew the points out of them, and inserted his own. “I shall insist,” said he, after Colyer had seated himself, “that we make some progress in this case to-day, at any rate; and my opponent can use the points which he has, with the privilege of making more if he desires.”

To this the judge assented, and Mr. Colyer took up his bundle of papers, drew from them Mr. Reynolds’ brief, supposing it to be his own, and commenced his argument.

“My first point, your honor, is”—and he commenced reading. After proceeding a few moments, he paused, and then commenced again with considerable emphasis. “My first point is,”—and he read several lines then came to a dead pause. “Well,” said he,



“that point does not seem to me to be exactly like the one I drafted, and I confess it does not bear much on my side of the case; however, I will, if the court please, consider my second point,” and he commenced reading his second point.

He proceeded a short time, when he paused, and looked at the authorities to which it referred.

“Well, well; I must confess when I drew these points, I was thinking that I was employed on the other side, or else my clerk has made a horrible mistake in copying them. If your honor please, I cannot proceed with this argument; if I do, I shall be beaten by my own showing. Mr. Reynolds,” he continued, turning to his opponent, “under the circumstances, I beg that this”—here he was interrupted by a general explosion of laughter from the bar, who had been a witness to the change of points.

It was quite impossible for Judge Nelson to maintain his gravity, and he, too, joined in the laughter. At length, when order was restored, Mr. Reynolds arose and with much dignity remarked to the court that, as he did not desire the counsel’s aid in arguing his side of the case, he would consent to have it go over, for the purpose of giving his opponent time to prepare a brief for himself.

In person, Mr. Reynolds was slightly above the ordinary stature; his frame was slender, but well proportioned. In his earlier years, his form was more athletic. His face was thin. His high forehead evinced intellectual power. On the whole, his countenance was one upon which a physiognomist would look with pleasure; it indicated that “he read much—was a great observer, and looked quite through the deeds of men.” A special element in his character was his comprehensive vigor, and the accuracy with which he separated truth from error, the facility with which he methodized and elucidated his arguments. His success as a lawyer was the reward of constant mental elaboration.

“He was well instructed in the great principles which underlie the administration of justice, and with inexhaustible resources always at command, he was never at fault for a reason or an argument. No man was ever able to master a case with greater ease and facility, or present it with greater clearness. If unsound, he was always plausible, if unprepared, he was always ready with the keen weapons of wit, irony, and argument; and if unable to convince, he never failed to hold the attention and interest the most learned and grave judges. No man was ever gifted with more fertility of resources, or knew how to use them with greater effect; there was about him that which made him a favorite among men of eloquence, learning, wit, and fancy. In fact, in this sphere he was the peer of all, and the imitator of none.

“He lived a life of devotion to his profession. He never sought or held public office. Simple and retired in his tastes and habits—a warm and generous friend, an open and manly adversary. He was alive to the obligations of charity, and dispensed with a lavish hand, to every good and worthy object. Many of the religious, charitable, and literary institutions of Albany are indebted to him for pecuniary aid and influence. For many years he was one of the vestry and a member of St. Peter’s Church, in that city.”

His abnegation of politics was more thorough than that of Mr. Hill or Mr. Stevens.

The secret of this was his utter distaste for those practices and associations which are so necessary for the complete politician.

He was often solicited to become a candidate for office. In the autumn of 1831, a committee of gentlemen waited upon him for the purpose of tendering him the nomination for Congress for the Albany district.

After listening to their statement, he said:

“Gentlemen—I am not politician enough to accept

this nomination. If I should be elected, I could be of no service to you as a partizan."

"We do not care for that, Mr. Reynolds; we tender you this nomination for your talents and your qualifications for it," said one of the gentlemen.

"But I have just informed you that I have no qualifications for the office. I have no capacity for pulling the political wires, and if I attempted that delicate business, ten to one that I pulled the wrong one, and thereby ruined your best plans. No, gentlemen, you want a wire-puller; I cannot be that man, and, therefore, I cannot accept those honors which you have so courteously and generously tendered me," and the committee withdrew.

In his social relations, Mr. Reynolds possessed those qualities which accompany a refined and sensitive mind, and which made him beloved in the sacred circle of home.

From the year 1837 down to the adoption of the Code of Procedure, Marcus T. Reynolds, Samuel Stevens, and Nicholas Hill were leading lawyers in the State. The two former had been distinguished at the bar of the Supreme Court and the Court for the Correction of Errors, long before the latter appeared there; but soon after his removal to Albany, Mr. Hill, as we have seen, ranked with the ablest at that bar, and was considered a rival of Mr. Stevens and Mr. Reynolds. The three were constantly engaged in the principal courts of the State, sometimes on the same side, but more frequently opposed to each other. It is proper, therefore, in this connection, to consider the character of SAMUEL STEVENS.

He was a lawyer of rare accomplishments, an advocate of great power. He conducted his causes with dexterity, avoiding unnecessary exaggeration. Like Ogden Hoffman, he contrived to give interest to a dry detail of facts, by a happy adaptation of his mind to them; he could on the instant select out of a variety of matters those which would made the best appear-

ance and be least exposed to observation and to answer; "he could estimate the probable case which was hid in his adversary's brief, and prepare his own to elude its force—decide between the advantage of producing a witness, and the danger of exposing him; if he represented the defendant, he knew how to apply evidence to a case new in many of its aspects, or take the grave responsibility of offering none. Besides the opportunity which the forms and mode of trial gave to the exercise of skill, the laws of evidence afforded him still greater play for his ingenuity and grounds of caution, possessing even on the most trying occasions imperturbable self-possession, always having a full comprehension of the law and facts in his case."

As a speaker, he was as effective before the court as either Hill or Reynolds; as a jury lawyer he was more successful than the former, because he was more emotional than he, more vivacious and vehement. His gesticulation was active and frequent, and he often illustrated his argument with a humorous story, which contained point and force. His good nature prevailed at the bar, always accompanied by a keen wit, which was ever at his command, and ever agreeable, because it never descended to pungent or offensive satire. In his manner he was what might be called free and easy; his mouth was always occupied by a quid of tobacco, by no means belonging to the infinitesimal size. He was popular with the people, who thoroughly believed in him, and thus he had one quality of the successful politician, and he was more of a politician than either Hill or Reynolds.

He was first known to the political world as one of most able and eloquent supporters of De Witt Clinton in the State.

In 1825 he represented his native county of Washington in the Assembly, and although one of the youngest members of the House, was regarded as a leader of the Clintonians in that body.



In the year 1827, he was again elected to the Assembly. In February of that year, he delivered a speech on that part of the governor's message which referred to internal improvements, which for brilliancy, point and effect, was unsurpassed, while it established his reputation as a profound thinker, an ingenious reasoner, and an accomplished speaker. He afterwards identified himself with the Whig party, and in the legislative caucus held in February, 1839, was strongly sustained as a candidate for attorney-general; Willis Hall, of New York, was, however, the successful candidate, on a vote of forty-five to forty-two. It was in this caucus that John C. Spencer was nominated for secretary of state. It is said that Mr. Stevens himself was quite indifferent as to the result of this contest. He was never again before the public for any civil office, excepting once, when he was nominated for lieutenant-governor.

In personal appearance, Mr. Stevens differed materially from both Hill and Reynolds. He was short, thick set, tending to corpulency—his eyelids were always partly closed, as though they were affected by the light. He was of a nervous temperament, active, energetic, and restless.

These three eminent lawyers, as has already been said, often opposed each other at the circuits, especially during the years 1835, '36 and '37. They were frequently engaged at the circuits in distant counties, and were always at the Schenectady courts.

When it was known at Union College that either of these distinguished lawyers was engaged in the trial of a cause, the court room would be thronged with students, as it was a custom of the faculty to excuse them from recitation on such occasions. When either of these advocates addressed the jury, "scarcely any sound could be heard except the pens of the reporters, and those of the opposing counsel taking notes."

At the Albany bar there was scarcely a case of im-



portance tried in which one of the three did not appear as counsel. "They opened their briefs with apparent unconcern; stated complicated facts and dates with marvelous accuracy; conducted a cause with zeal and caution through all its dangers; replied on the instant, dexterously placing the adverse features of each side in the most favorable positions for their clients; and, having won or lost the verdict for which they struggled, as if their fortunes depended on the issue, dismissed it from their minds like one of the spectators. The next cause was called on; the jury were sworn; they unfolded another brief and another tale and were instantly inspired with new zeal, and possessed by a new set of feelings; and so they went on till the court adjourned." Among the many distinguished qualities which they possessed, there were two with which each was liberally endowed, and which were "essential to their splendid success—a pliable temperament and that compound quality, or result of several qualities, called *tact*, in the management of a cause."

Mr. Reynolds died on the 13th day of July, 1864, in the seventy-seventh year of his age.

Ten years previous to his death, owing to ill health, he retired from the bar, and nearly withdrew from former associations and society, save that of his immediate family. And at last his splendid intellect vanished from the dome of thought, and his last years were passed in mental darkness.

## WILLIAM G. ANGEL.

His Ancestry.—Birthplace.—Description of his early home in Otsego County.—His Love of Knowledge.—His Poverty.—The Commencement of his Education.—The Circulating Library.—His Struggle to obtain access to it.—His Ultimate Success.—Engages as a Clerk in a Dry Goods Store.—Deposits a large quantity of Whiskey in the wrong place and Leaves the Store.—Dr. Buckingham and his School.—Young Angel a Pupil.—How he Obtained a Copy of Murray's Grammar.—His Progress in the School.—Becomes a Medical Student.—Abandons the Study.—Is a Witness in a Lawsuit.—The Novelty of the Scene.—Colonel Farrand Stranahan and Honorable William Dowse, of Cooperstown, the Opposing Counsel.—Angel's Personal Appearance.—The Wonder with which he Witnessed all the Proceedings.—A new Field of Ambition opens.—Enters the Service of William Dowse as a Laborer.—How he managed to become a Law Student.—Dowse Elected to Congress.—His Death.—The Struggle of young Angel to obtain his Profession.—Success at Last.—Discouragement of his early Professional Life.—His retiring nature and embarrassment in Courts of Record.—An incident occurs which causes him to overcome his Embarrassment.—Samuel A. Starkweather.—Angel's Professional Career.—He becomes Prosperous, and gains Distinction at the Bar.—Is Elected to Congress.—Is repeatedly Re-elected.—His Congressional Career.—His relations with Calhoun, Clayton, Silas Wright, General Houston, and Ogden Hoffman.—Retires from Congress.—Removes to Hammondsport, New York.—Forms a Partnership with Morris Brown, Esq.—Martin Grover a Student in their Office.—Angel removes to Angelica, and enters into Partnership with Mr. Grover.—Character and Success of the Firm.—Mr. Angel enters into Partnership with Honorable Wilkes Angel.—Is Elected a Delegate to the Constitutional Convention.—His Labors and Services in the Convention.—After its adjournment, he is Elected County Judge of Allegany County.—Character as a Judge.—Retires from the Bench.—His Death.—Characteristics.

BLOCK ISLAND, which is nominally a part of Rhode Island, was the birthplace of Wm. G. Angel. Early in the seventeenth century, his ancestors emigrated from Warwick, England, and settled in the colony of Massachusetts. They belonged to the Society of Friends; and accompanied Roger Williams to Rhode Island, and settled at Providence, where many of the descendants of the family still reside. At length the grandfather of Mr. Angel removed to New London, Con-

necticut, where his father was born. His mother was a daughter of Stephen Gordon, of Colchester, Connecticut. She, too, belonged to the Society of Friends.

During the Revolutionary war, his father was favorably disposed to the cause of liberty, and furnished such aid as was consistent with the principles of the sect to which he belonged; yet he was subjected to many annoyances, and serious losses—losses which reduced him nearly to poverty itself. He eventually removed to Block Island, where, on the 17th day of July, 1790, his son, William G. Angel, was born; being the youngest of seven children. When William was two years old, his father removed to Richfield, Otsego county, New York; then, an almost unbroken wilderness. Amid the wild scenes—the grand woods—and by the side of the bright shimmering streams of Otsego, Mr. Angel received his first impressions of life. In a house formed of logs, covered with strips of elm bark—the floor of which was made of split logs faced with an ax, he first knew the sacred and tender affections of home—the unwearied watching and cheerful sacrifices of parents, and all the endearing offices of brothers and sisters, which shed a serene and holy light in that humble home. In the years of his prosperity and success, when mingling with the great, the learned, and the gifted, memory often carried him back to that home of poverty:

“ And again returned the scenes of youth,  
Of confident and undoubting truth,”

and he sighed for the happy hours, which even amid toil and privation he had passed there—for the loved ones he should see no more.

As the boy increased in years, he developed a bright, inquiring mind. At length he began to share with his father the labors and hardships of the day, and these were great; for their nearest grist mill was at Fort Plain, on the Mohawk, thirty miles distant, and the nearest store was at Cooperstown, eleven miles

away. For several years the family depended upon the deer which abounded in the forest, and the trout which swarmed in the streams, for the meat they used. When William was old enough, it was his delight, with dog and gun, to hunt for deer or fish for trout. Occasionally while hunting, a black bear would cross his path, and then a steady hand, a sure aim, always brought Bruin to the ground. Sports like these enlivened his life of labor, and lent a charm to its hardships.

The family of Mr. Angel had been at Richfield several years before a school was established there, and William learned the alphabet from an elder sister, who, in due time, taught him to read. When he was seven years old, a school was opened, four miles from the residence of his father. A relative resided near the school, and with him the boy boarded for the term of seven or eight months and attended school. His studies were confined to the spelling book. So rapid was his progress, that at the close of his term, he could repeat almost every word in Webster's spelling book, and was an excellent reader. Leaving this school, he returned home and remained with his father on the farm, until he attained his seventeenth year, laboring during the summer, and occasionally attending school during the winter. The common schools of that day afforded, at best, indifferent advantages. The only books to which young Angel had access during these years, were the Bible, a part of Shakespeare's works, Barclay's Apology for the Quakers, Webster's Third Part, and the Columbian Orator. These works he studied with the most unremitting industry, committing large portions of them to memory. Like many whose lives have adorned the "Bench and the Bar," Mr. Angel ever derived from Shakespeare a never-failing source of intellectual delight. He always had a true and just appreciation of that "great poet of humanity, whose every page furnishes us with intensified expressions,



where some happy word conveys to us a whole train of ideas condensed into a single luminous point."

At length a circulating library was established in the neighborhood. To gain access to this, was the ruling desire of his heart. But there was an almost insurmountable obstacle in his way. Before he could be admitted to this intellectual banquet, he was obliged to pay the sum of two dollars—an amount far beyond his reach. So limited were the means of his father—so pressing was his need of money, that he could spare none to his son, and as the young man had no friend from whom he could borrow, fortune seemed to deny him access to the books.

Learning that a man living some distance from his father owned two shares in the library, one of which he desired to sell for the sum of two dollars, he immediately sought this man, and made an arrangement with him by which he was to take the share, and in payment, work for the owner on his farm. And now the coveted treasures were open to him. The "Meccas of the mind" were before him, and his every faculty paid tribute to them. His mind was enlightened and disciplined by the accuracy of the logician—the penetrating spirit of philosophy—the intuitions of genius—the researches of history—the science of the mind—the spontaneous utterances of the gifted and inspired poet. Compelled to labor in the field, like Ben Jonson who carried a trowel in one hand and a book in his pocket,—young Angel carried a book in his pocket, and seated on the plow beam, while his team was resting, he studied the classic page. When moving over the well-turned furrow, he meditated upon his studies, and grafted on his mind all he had read. When night came, his book was again his companion; and thus for several years, his life was the scene of labor and study. Thus, struggling with all the disadvantages of his narrow circumstances, gifted with great industry, and a retentive memory, he mastered every minute portion of the works he



read ; thus his acquirements were lasting and valuable. His mind had now become too active, and his ambition too great, to be contented with his manner of life ; he therefore left his father's home and entered a store, which had been established near the residence of his father, in the capacity of clerk and salesman. But he soon learned that in this, he had mistaken his calling. So much of his time was given to his books, that his employer complained of him.

One day, with book in hand, he was engaged in transferring a quantity of whiskey from one barrel into another. At length his book caused him to forget his occupation, and before he was aware of it, several gallons of the liquor found a lodgment on the cellar floor. After remaining in the store four months, he became thoroughly disgusted with trade, and leaving the business, he returned again to the labors of the farm.

In the autumn of 1808, Doctor Buckingham, a graduate of Yale College—a physician of fine attainments and a ripe scholar—settled in the neighborhood, and in the winter following opened a grammar school. It had long been the desire of young Angel to attain a knowledge of English grammar, and this was the first opportunity which presented itself for his pursuing this branch under a competent teacher ; he therefore resolved to attend Doctor Buckingham's school. Upon consulting with his father he found him at first opposed to the project, as he desired his son to follow the avocation of a farmer, and believed that his education already sufficiently qualified him for that business. But at length he gave his consent, with the understanding that William should see that the winter's wood was drawn to the door, and prepared for the fire, and that he should also take care of the stock on the farm, nights and mornings. To this, the young man readily consented. But now another difficulty presented itself. He had no grammar, and what was still worse,

no money with which to buy one. He endeavored to find some employment by which he could earn sufficient means to purchase the desired book, but failed in this. What could he do? The school was soon to commence, and he was entirely unprepared. At length fortune favored him. In a part of the house which was seldom visited, stood an antique desk, which had been removed from Rhode Island. It was the receptacle of a confused mass of rejected trumpery of little value.

One day, while searching for some article in this desk, he accidentally discovered a pair of solid silver shoe buckles, once worn by some pains-taking ancestor. The thought at once occurred to him, that with those buckles he could gain the means to obtain the book he so much needed. His plan was instantly formed, and although it was a cold and stormy day, late in November, and now ten o'clock in the forenoon, he started on foot for Cooperstown, a distance of eleven miles. Through sleet and rain, he reached that village, and succeeded in disposing of the ornaments to a silver smith residing there, receiving in payment the sum of one dollar and thirty-five cents, which was a sufficient sum to purchase the book, and some refreshments. With his highly prized volume, he reached home before night, chilled and weary, but happy in the possession of a copy of Lindley Murray's Grammar.

Early in December, 1807, he entered the school of Doctor Buckingham. He was obliged to walk a mile to reach the school, and yet, with all the difficulties in his way, he made such progress in his studies, that his teacher declared that he had pursued the study of grammar before entering his school. He continued under the tuition of Doctor Buckingham during the winter of 1807-8, and in the following spring entered the office of the doctor as a medical student. After pursuing the study of anatomy with energy eight months, he became satisfied that nature

never intended him for a physician or surgeon. He therefore returned again to his labors on his father's farm. Young Angel was now in his nineteenth year. He had been a farmer, a merchant's clerk, and a medical student—all of which were alike distasteful to him. He was at a loss to decide upon an occupation which he could follow with any pleasure and profit. During the summer of 1809, he continued to labor on his father's farm, devoting every leisure moment to his books, but without any plan for the future. At length an event occurred which changed the whole current of his life, and directed him to that profession for which nature had so well adapted him.

Early in September, 1809, a suit was commenced before a justice of the peace, residing in a neighboring town, by a man who charged the defendant with fraud and deceit in selling him a cow. It was to be a jury trial, and the interest in the suit was increased when it was known that Colonel Farrand Stranahan was to try the case for the plaintiff, and William Dowse, Esq., for the defendant. These gentlemen were then young, but eminent members of the Otsego bar, residing at Cooperstown. The former subsequently attained a high position in the political history of the State, and represented his district in the Senate of the State several years.

On the day appointed, the trial took place in the presence of a large number of people. Among the witnesses subpoenaed for the plaintiff, was young Angel. He appeared at the trial fresh from the plow field, attired in a tow frock, and pantaloons of the same material, large enough for meal bags, so short that they hardly reached to the top of his half-worn blue stockings, which were thrust into a pair of cow-hide shoes, the toes of which were open to the weather, while his hat had the appearance of having once belonged to some trans-Atlantic ancestor.

In addition to this he was covered with dust and perspiration,—in fact, he stood before the court the very

picture of rusticity. He had never witnessed the trial of a law-suit—never seen a lawyer. He had read of such beings, it is true—but precisely how they appeared or acted, he had not the remotest idea. To him, therefore, the proceedings of this trial were invested with more than dramatic interest. With wonder and astonishment he watched every movement in the case. When an objection was taken to the introduction of evidence, and counsel argued for and against its introduction, he believed himself in the presence of the most wise and learned men in the world. Even the little squint-eyed justice, whom the lawyers addressed as “your honor,” in his eyes was clothed with grand judicial power and authority. In after years, when standing before Spencer, Tompkins, Platt, Yates, Cowen, and Marcy, surrounded by the great lawyers of the State, he did not regard them with half the reverence and awe which he felt for the justice who repeated to him his first oath.

Young Angel was the principal witness for the plaintiff, and he gave clear, distinct and intelligent testimony. The rigid and searching cross-examination to which he was subjected was endured with a self-possession which exhibited a well-poised and enlightened mind. The keen lawyers soon learned that beneath the homely garb of the rustic witness, there breathed a gifted soul,—replete with thought—energized by reading and self-culture.

After the evidence was closed, he remained to hear the counsel “sum up,” and listened to their remarks with a feeling of wonder and delight—almost of awe. During the entire discussion, he seemed laboring under the spell of enchantment, and thought he would exchange the wealth of the world, were it his, to be able to talk as they did on that occasion. The novelty of the event undoubtedly enhanced its importance in his mind, and never having heard a public speech of the kind before, he very naturally attributed to the remarks of the counsel a degree of excellence at least equal to



their merits. From that moment he conceived a wish to become a lawyer. The idea, however, was but imperfectly entertained, and, on contemplating the subject in all its aspects, the difficulties that presented themselves to his mind left him only a vague and undefined hope, rather than any settled purpose or determination. When the trial was over, Mr. Dowse requested him to assist in catching his horse in the pasture, which was very bad to catch. He very readily consented to do so, and displayed so much activity and tact in quieting and catching the animal as to attract the favorable attention of Mr. Dowse, who proposed to take him into his employ, to do the work in his garden and about his house and office, take care of his horse, make fires, and assist in the cultivation of a small farm, for which he offered to pay him eight dollars a month besides his board. Upon consulting his father, he consented to the arrangement, and on the 17th day of September, 1809, William went to reside with Mr. Dowse, at Cooperstown. He commenced his services with his employer in harvesting a field of buckwheat, and soon found that he could do all the work required of him in one or two hours in each day. Having much leisure time, he asked Mr. Dowse to allow him to read some of his books, to which he cheerfully assented. Mr. Dowse had a partner at this time, of the name of Flagg, who was a graduate, and who instructed Angel in some of the higher branches of mathematics, and under his advice he commenced reading Blackstone. Much of his time was spent in the office, and he soon became deeply interested in the study of his book, which seemed to open to his mind not only a broad field of investigation, but also principles and a science more congenial to his genius and intellect than had ever before fallen under his observation.

Mr. Dowse was a man of social feelings and familiar habits. Mr. Angel occasionally asked him ques-



tions in relation to matters he had been reading, and he freely explained whatever appeared obscure and was not readily understood. After having on several occasions discussed the subject of his reading, he was one day surprised by Mr. Dowse exclaiming :

“Young man, you must study law—you are a lawyer already—you have it in the natural way.”

To this he suggested an objection in his situation in life. He informed Mr. Dowse he had not a shilling in the world, nor a friend who was able to help him ; and as it would require a period of seven years to complete his studies, he regarded the project as almost impossible of accomplishment. That gentleman, however, encouraged him to undertake it, assuring him he would succeed, and pointed out to him a variety of ways in which he might soon be able to earn sufficient to pay his expenses ; and in the benevolence of his heart set earnestly at work to aid him. He prepared the necessary certificate of clerkship and filed it in the proper office, and at the age of about twenty Mr. Angel found himself regularly installed as a student at law. And here commenced his first great struggle in the battle of life.

He remained with Mr. Dowse several years, during which time he supported himself by managing causes in justices' courts and by teaching school, for which latter occupation he had qualified himself by the severest application.

In 1812 he was married, and, thus subjected to the additional expense of providing for a family, his determination and perseverance strengthened with every new difficulty which presented itself, and he never dreamed of a failure.

In the autumn of 1812, Mr. Dowse, his friend and patron, was elected representative in Congress from the fifteenth Congressional district, but he was prevented by death from reaping the honors thus bestowed upon him ; he died on the 18th of April, 1813. This event was a severe blow to Mr. Angel. Through

all the eventful scenes of his life, the memory of this friend remained fresh in his mind.

After the death of Mr. Dowse, Mr. Angel was for a time under the instruction of Colonel Stranahan, with whom he made rapid proficiency in his studies.

In the autumn of 1816, he removed to Sherburn, in the county of Chenango, and entered the office of William Welton, Esq. Mr. Angel was now so advanced in the knowledge of law and the detail of practice, that Mr. Welton offered him a salary of three hundred dollars per year and his board.

Under this arrangement he remained at Sherburn several months, when Luther Elderken, of Burlington, Otsego county, a lawyer controlling a lucrative practice, desired him to enter his office as an equal partner, although he was not yet admitted to practice. This offer was so advantageous to Mr. Angel that Mr. Welton generously released him from his engagement, and the former accepted the offer of Elderken. This relation continued until October, 1817, when Angel was duly admitted to practice. After that event, he still continued his business relations at Burlington.

At length Mr. Elderken absconded, taking with him large sums of money collected by the firm, belonging to various clients, leaving Mr. Angel to refund the amounts out of his own means. This was a serious misfortune; but his creditors were exceedingly lenient, and he remained in practice, conducting the business alone.

Mr. Angel at length found himself established alone in business, and admitted as an attorney, but incumbered with a family and largely in debt, not only on his own account, but on account of the late partnership, from which he had derived a bare subsistence. His business was still further crippled and reduced by the passage of a law by the Legislature in 1818, extending the jurisdiction of justices of the peace to fifty dollars, which destroyed nearly one-

half of the business of attorneys. Relying upon his own strength, he set himself resolutely at work, with no thought of yielding for one moment to this load of accumulating evils. From the time Elderken left, he labored incessantly, night and day, in season and out of season, saving all he could, and neglecting no opportunity of earning a shilling in any honest and laudable manner. Necessity had somewhat improved his habits of economy, and on a calm survey of his condition, he saw no occasion to despair. Too poor to keep a horse or to hire one, he repeatedly walked ten miles on foot, to attend a suit in a justice's court, and carried his books under his arm, returning in the same manner when the trial was over. About this time, also, there were many applications to do surveying. Not having any knowledge of the science, he resolved to learn it, and immediately procured the necessary books and instruments, and commenced the study without any instructor. In connection with his study, he commenced practicing upon an old farm adjoining the village, which was laid out into large fields for pasturing, and with the aid of some boys to carry his flags and chains, he surveyed this farm into lots of all conceivable shapes and dimensions. In this way he acquired a complete knowledge of surveying, and was frequently employed at that business. He was then appointed a commissioner of deeds, which, together with his surveying and making conveyances, was soon a very considerable source of revenue. From this period, his friends multiplied, business increased, and in two or three years he had discharged all his own debts, and all the debts with which his late partner had incumbered the firm, including the money of the clients which he had applied to his own use.

An obstacle in the way of his early success as an advocate was found in a feeling of diffidence and reserve, that it was almost impossible to overcome. A nervous embarrassment seemed to beset him whenever he entered the court and mingled with his seniors in

years and in the profession, which appeared somewhat inconsistent with the tremendous energy and unyielding fortitude he had exhibited in his struggle for a place at the bar. To account for this feeling or to overcome it was equally difficult, and for three or four years after his admission to practice, he did not venture to address a jury in a court of record.

The bar of the county of Otsego at this period was one of the ablest in the State, embracing such men as Samuel Starkweather, Isaac Lulye, Jabez D. Hammond, Robert Campbell, Levi Beardsley, and Alvan Stewart, then in the vigor of manhood and in the full tide of successful practice. To assume a rank among such men, required no ordinary talent and preparation, and no slight degree of resolution and moral courage. The difficulty of overcoming the feeling of reserve which seemed to control the energies of Mr. Angel was daily increasing; but at length he was indebted to an unforeseen incident which developed the latent strength of his nature. He was employed to collect a promissory note, and brought a suit upon it in the Supreme Court. The defendant appeared in the action, and merely interposed the plea of the general issue, which did not, however, as the rules of pleading then were, apprise the plaintiff of the real nature of the defense; and it was only a day or two before the sitting of the court, that Mr. Angel learned that the defendant intended to contest the note on the trial, on the ground of *forgery*. Supposing that he could readily engage some of the older members of the bar to aid in trying the cause, he waited until the opening of the court, when, on applying to them, he found every lawyer whose services were worth employing already engaged on the opposite side, with Mr. Starkweather for the leading counsel against him. The cause came on, and he sat down to the trial alone, with feelings that can be better imagined than described. The evidence commenced in the morning and was not closed until evening, when the court ad-



journed for tea. The trial was severely contested, every inch disputed, and called out all the skill and legal acumen of the respective counsel. Mr. Starkweather at that time held a commanding position as an advocate, ruled the bar by his influence, and was considered almost invincible before a jury. He summed up the cause for the defendant in an able, eloquent and brilliant manner, exceeding many of his proudest efforts, and took his seat with a confident air of anticipated triumph. When he had concluded, Mr. Angel rose to reply under a depressing degree of embarrassment. He felt the full importance of the occasion to himself as well as to his client, which at the moment seemed almost sufficient to overwhelm him, and when he commenced speaking he could hardly articulate a single sentence. Nerving himself, however, for the effort, he gradually recovered his self-possession, and proceeded to review the evidence and the arguments of the opposing counsel. It was the first time his intellect had been taxed to the utmost, and as much to his own surprise as that of others, he found himself possessed of resources sufficient for the emergency. He brought to his aid a clear mind and discriminating judgment, with a faculty for plain and familiar illustration, that is seldom met with in the mind of an advocate to an equal extent. He proceeded deliberately to dissect and overturn the arguments and positions of his adversary, who throughout his entire address to the jury manifested great uneasiness, and repeatedly interrupted him by calling upon the court to protect him and insisting that Mr. Angel was out of order. The court refused to interfere, and decided that he was strictly in order, and that his argument was entirely fair and legitimate. The effort was a complete and most gratifying triumph. The court charged the jury on the law of the case, who then retired, and after an absence of only five minutes, returned into court with a verdict for the plaintiff for the entire amount of his note.



On the morning succeeding the trial, Dr. Yates, who was foreman of the jury, went to Mr. Angel's room at his hotel, and stated that he had come at the request of the jury, and in accordance with his own inclination, to thank him for doing complete justice to the case and the opposing counsel, who, in the consciousness of his strength and the force of his influence, was sometimes overbearing and oppressive towards those who were younger and more humble than himself.

From this time forward, Mr. Angel experienced no difficulty whatever in his professional pursuits, or the discharge of his professional duties. His business increased rapidly, and very soon equaled in amount the practice of any lawyer in the county, and never after, when able to attend to business, has he been without a client or something to do. He rapidly rose to distinction as an advocate, and acquired an influence with juries that seemed to know no limit. His style of speaking was plain, deliberate, and impressive, enforcing his positions with a clearness and logical precision that usually amounted to little less than demonstration, and presenting his conclusions and the reasons upon which they were based with a candor that never failed to carry entire conviction of his sincerity to the mind of the hearer.

In politics, Mr. Angel was a Democrat of the strictest sect, and early attached to the Bucktail party. In 1821, he was appointed surrogate of the county of Otsego, which office he held for several years, and discharged its important and perplexing duties with the greatest satisfaction to all parties concerned, and to the public at large.

In the fall of 1824, at the time of the election of John Quincy Adams to the presidency, he was the candidate of the Republican party for their representative in Congress from the district of Otsego. His opponent was Dr. Campbell, of Cherry Valley, an estimable and popular man, connected with several large

and influential families of the early settlers of the county. The contest was warm and spirited, and Mr. Angel was elected by a handsome majority.

On entering Congress, he took early and decided ground against the Tariff and the Bank, and steadily opposed every species of monopoly, entertaining the opinion that it was not the legitimate function of government to regulate the private business affairs of the people by means of special legislation. He was placed on the Committee on Territories, of which the late President Polk was also a member, and a feeling of friendship and confidence, which was never impaired, existed between them until the president's death. During the term for which he was elected, he was emphatically a working member, seldom participating in debate. At the period of his election, there were three papers published in Otsego county, two at Cooperstown and one at Cherry Valley, all of which supported the cause and administration of Mr. Adams. Immediately upon entering Congress, he united himself with the supporters of General Jackson, and continued a firm and consistent friend of him and his administration during the remainder of Jackson's political life.

In the fall of 1828, he was again elected to Congress by a large majority over General Crafts, of Laurens, one of the most wealthy and influential men in the county. At the same election, General Jackson received a large and decided majority in Otsego county.

During his second term, in consequence of a defect in his eyesight he was excused from serving on any of the committees, and devoted himself generally to the business of the House, which he perfectly understood, and made himself familiar with its minutest details.

During the winter of 1830, many important and exciting questions were the subjects of discussion in the House, embracing the Tariff, Internal Improvements by the general government, and the removal of

the southern Indians beyond the Mississippi river. In all these questions Mr. Angel took a deep interest, and often participated in the debates. On the first day of April, 1830, the bill for the construction of a road from Buffalo by way of Washington to New Orleans being under consideration, he submitted his views on the general principle of the bill, in an earnest and forcible speech against it, and in favor of the doctrines afterwards promulgated by General Jackson, in his celebrated veto of the Maysville road. This was the first set speech he had ventured to make in Congress, and it attracted attention for the plain, pointed, and direct manner in which the subject was treated, and the strong common sense that characterized its positions. It received the compliment of the profound attention of the House, and produced no little sensation.

In the fall of 1830, Mr. Angel was again put in nomination as a candidate for re-election. In the convention, several prominent members of the party were also presented for nomination, and their claims were zealously urged, but without success, and Mr. Angel received the nomination by a large and decided vote. His opponent in the canvass was Horace Lathrop, Esq., of Cherry Valley, an intelligent lawyer and worthy man, who had once been elected clerk of the county, when the political majority was largely against the party to which he was attached. In this contest, the entire strength of the opposition was put forth, and a combination of interests and feeling evoked to defeat Mr. Angel, which for a while appeared likely to prove successful.

One of the unsuccessful candidates in the convention also thought it his privilege to oppose him at the polls, and in a remote town where Mr. Angel was but slightly acquainted, produced a large defection against him, and while the regular Democratic ticket received a majority of thirty, the majority against him was one hundred and sixty. Never before in the his-

tory of the county had a candidate been so fiercely and violently opposed. The whole contest turned upon the Congressional candidate, and the rest of the ticket on either side was left to take care of itself. But while the wealth of the county interested in manufactures, combined with the religious fanaticism of some, and the disappointed ambition of others taking revenge at the polls, was arrayed in confident force against him, he was nobly sustained by the sturdy yeomanry of his district, whose votes could not be controlled by political jobbers, wire-pullers, and small politicians, and Mr. Angel was elected by a small majority.

Under the circumstances, his election may be regarded as one of the greatest political and personal triumphs ever won in the county of Otsego. To the managers of the opposition it was equally a matter of surprise, disappointment and mortification, and they were at a loss to understand the cause of the extent and strength of the devotion manifested by the mass of the people for their favorite candidate.

At the succeeding session of Congress, the only question of interest in the discussion of which Mr. Angel took part, was the claim in behalf of James Monroe. While the subject was under consideration, Mr. Angel submitted his views at length against the principles of the bill, in a speech of great clearness and power. It is sufficient to say of this speech, that subsequently, when some of the members from New Hampshire, who acted and voted with him in relation to this matter, were in nomination for re-election, and were assailed for having opposed this claim, the speech of Mr. Angel was published and circulated in their districts as containing a perfect vindication of their conduct and their votes. And still more recently, in 1844, when Mr. Polk was assailed while a candidate for the presidency, on the same ground, in some of the Southern States, this speech was extensively circulated and with great effect, for the purpose of re-



moving any unfounded prejudice that might exist on the subject.

With the termination of this Congress, Mr. Angel closed his Congressional career, and again retired to private life. During the entire period of his last two terms, he had been nearly blind, and was dependent upon his friends for his reading, and employed an amanuensis to conduct his correspondence and prepare his notes for the debates. So great was this difficulty, that when about to address the House on the subject of the Buffalo and New Orleans road, he was unable to read the title of the bill, although displayed in coarse print, and was under the necessity of asking a friend to read it for him. It was under these disadvantages that his most important Congressional labors were performed, and we are better able to appreciate their character for this understanding of the matter.

Mr. Angel was the intimate personal friend of Mr. Calhoun, who manifested for him an undiminished feeling of friendship and regard during his life, notwithstanding the rupture of their political relations when Mr. Calhoun severed his connection with the party. Among his intimate personal associates and confidential friends while in Congress, were Judge Clayton, of Georgia, General Houston, then of Tennessee, and Ogden Hoffman and Silas Wright, of New York. With this class of men he was held in high esteem, and it is no light matter of praise that he was counted worthy of their confidence and regard.

On retiring from Congress, he found his professional business so much disturbed, and his health and sight so greatly impaired, that he hesitated to engage again immediately in such arduous duties. But shortly recovering both health and sight, he formed, early in the summer of 1833, a copartnership with Honorable Morris Brown, then a resident of Hammondsport, New York, an eminent member of the Steuben bar, and now a leading member of the Penn



Yan bar. Mr. Angel's reputation gave him a prominent position in his new field of action, and the business of the firm was exceedingly prosperous.

At the time he decided to leave Otsego county, Martin Grover was a student in his office. Mr. Grover had become so attached to his preceptor, that he accompanied him to Hammondsport, and in the office of Messrs. Brown & Angel completed his legal studies. After his admission to the bar he removed to Angelica and there commenced the duties and responsibilities of an active and successful professional life.

Judge Grover entered upon his practice with the most unflinching industry. He is a native of Otsego county, and at an early period of his life, entered Hartwick Academy, where he won the commendation of his teachers by a practical and successful prosecution of his studies. "The ardor with which he sought for knowledge, in every useful form, may be compared to a miser seeking for gold." The same love of knowledge and investigation characterized him as the law student and the practitioner.

Often when professional labor occupied his time during the day, instead of retiring to rest at night, he sought his library and rarely left it until long after midnight. When the duties of his profession began to press him, he seemed to be indifferent to sleep.

An eminent lawyer who knew him intimately during the earlier years of his practice, once said to the author :

"I often admired Mr. Grover's stores of legal learning, and I was always attracted by his vast fund of information on other intellectual subjects, for he was equally familiar with others, natural philosophy, history, biography, metaphysics, statistics, and politics. He possessed, in a remarkable degree, the power of retaining what he learned, and his stores of knowledge were ever ready at his command."

The devotion of Judge Grover to his profession, the ardor with which he explored its vast fields of

learning, led to a day of results and triumphs; he soon became one of the most popular lawyers in western New York. His intellectual and moral constitution, his education, his habits and his sympathies, all conspired to render him a favorite with "the sovereigns," and while he continued at the bar he was emphatically the people's lawyer, whom they have delighted to elevate and honor. He has represented them in Congress, and for many years has pronounced the laws for them from the bench, and they have recently given another proof of their confidence by placing him for a term of years upon the bench of the highest court in the State.

In 1835, Judge Grover, prompted by his confidence in Mr. Angel's legal attainments and abilities, prevailed upon him to remove to Angelica, and enter into business with him. This arrangement was fortunate for both parties; it combined strength of intellect, long experience and research, which soon brought the well-deserved emoluments of ardent professional devotion. The firm of Angel & Grover, during a period of nine years, was engaged in nearly every important case which was tried at the Angelica bar—a bar by no means inferior in ability and versatility of talent.

From the days when Ambrose Spencer sat upon its bench down to the present time, it has been an arena where the most gifted intellects of the State have contended, and there every kind of legal combat has been witnessed. There, John C. Spencer, S. A. Talcott, J. A. Collier, Luther C. Peck, John B. Skinner, Henry Wells, Robert Campbell, George Miles, Fletcher M. Haight, Martin Grover, and William G. Angel, have contended.

It was the fortune of Mr. Grover not only to contend with these eminent lawyers, but with a class equally powerful who came to the bar after them—men like David Rumsey, Wilkes Angel, M. B.

Champlain, Washington Barnes, S. G. Hathaway, Ward, Hawley, and others.

The firm of Angel & Grover continued until the year 1843, when it was dissolved, and Mr. Angel formed a copartnership with his son, Hon. Wilkes Angel, now of Belmont. This relation continued to exist until 1847, when the senior partner was elected county judge of Allegany county.

In 1846, Judge Angel was elected a delegate to represent Allegany county in the constitutional convention which met at Albany on the first day of June, 1846. The proceedings of that convention attest the ability and labor with which he devoted himself to the discharge of his duties.

As chairman of the committee on the appointment or election of all officers whose power and duties are local, and their tenure of office, he performed severe as well as delicate duties. The report on the matters submitted to that committee, which he made to the convention on the fifteenth of July, 1846, was a document prepared with masterly skill and ability, and reveals the vast amount of labor and investigation which it required and he gave.

Of the many speeches which Mr. Angel delivered in the convention, the one which he made on the ninth of June, on the qualification and the duties of the executive, was not excelled by any speech on that subject in the convention. His speeches on the apportionment — on the election and tenure of office of the Legislature — on the judiciary articles — on the canals and finances, and on the rights of married women, were pregnant with practical, useful and liberal suggestions, and furnished the convention with a fund of valuable information which greatly aided the members in their deliberations.

With the adjournment of this convention, Mr. Angel resumed his professional duties. But he was not permitted to continue long in practice. In June, 1847, he was elected county judge of Allegany coun-

ty. He discharged the duties of that office in the most acceptable manner four years and a half, and then retired forever from all public duties.

The learning, experience, ability, sound sense and impartiality which he brought to the bench, rendered him a favorite with the bar, and inspired the community with a general respect for him.

Judge Angel died at Angelica, on the thirteenth day of August, 1858, in the sixty-seventh year of his age.

Through life, his manners and habits were plain and unassuming; he delighted in the society and conversation of the learned and the intelligent. The sunny playfulness of his nature remained undimmed by the approach of age, giving peculiar grace to the autumn of his life, for it seemed like hoarded treasure, purified by the ordeal through which it had passed, "preserving his mind fresh and green from the frosts which bowed his form and whitened his locks."

Down to the latest period of his life, books were his delight, and when the author pleased him, he read and re-read his productions, gathering new beauties with each repeated reading; and thus the sun of his life went down, clear and unclouded.

## BENJAMIN F. BUTLER.

Born at Kinderhook.—His Early Life.—Is Sent to Hudson Academy.—Makes the Acquaintance of ■ Young Lawyer.—Friendship of the Lawyer for him, and the Reasons.—Butler becomes a Student in his Office.—The Lawyer's Career.—Is Elected to the Senate.—Martin Van Buren, at Hudson.—Removes to Albany.—Hostility of the Federalists to him.—Boswell's Description of Wilberforce applies to him.—His Characteristics.—Butler Accompanies him to Albany and Continues his Studies with him.—Butler as a Law Student.—Unites with Dr. Chester's Church.—Incidents.—Is Admitted to the Bar, and becomes a Partner of Mr. Van Buren.—His Marriage.—The Cases of *Wilkes v. Lion*, and *Varick v. Johnson*.—The *Medcef-Eden Case*.—Aaron Burr Associated in the Cases with Butler and Van Buren.—Interesting History of the Cases.—Butler's Early Cases in the Supreme Court and Court of Errors.—Appointed District-Attorney.—Appointed to Revise the Statutes of the State with John C. Spencer and John Duer.—The work which Butler Performed on the Commission.—The manner in which the work was Performed.—Character of the Work.—Adopted in other States and in England.—Butler Elected to the Assembly.—His Labors in that Body.—John C. Spencer and Ambrose L. Jordan in the Senate.—Character of the latter.—Regent of the University.—Butler Tendered the Office of United States Senator.—Declines.—Appointed a Commissioner with Theodore Frelinghuysen to Settle Difficulties with New Jersey.—Appointed Attorney-General of the United States.—Popularity of this Appointment.—Appointed Secretary of War in Jackson's Cabinet.—Holds both Offices.—Butler's Opinions as Attorney-General.—Felix Grundy.—His Opinion of Butler.—President Van Buren.—Butler Resigns his Seat in the Cabinet.—Subsequently Resigns the Office of Attorney-General.—Removes to the City of New York.—Resumes the Practice of Law.—Is Tendered the Office of Secretary of War under Mr. Polk.—Declines.—Death of Mr. Butler's Wife.—He Visits Europe.—Sudden Return, and the Cause.—Mr. Butler and Judge Kent Engaged in the great Case of *Levit v. Curtis*.—Butler's labors in it.—Effect on his Health.—Butler's Professional Life Referred to by Judge Kent.—Other Incidents in his Life.—His Literary Tastes and Acquirements.—Characteristics as ■ Lawyer.—Visits Europe.—Interview with Judge Kent before Sailing.—Travels on the Continent.—Reaches Paris.—Sudden Death.

BENJAMIN F. BUTLER was born at Kinderhook landing, in the county of Columbia, on the 17th day of December, 1795. His father began life as a mechanic, but subsequently became ■ merchant. He



was a man of strict integrity, industrious in his vocation, and honorable in his relations to the society in which he lived.

The early years of young Butler were passed in attending a common district school and aiding his father in his store. He is represented as a boy of respectful manners and of an intellectual turn of mind. While engaged in the store, he became a favorite of a Presbyterian clergyman whose residence was near his father's. He was a man of great piety, generous and high-toned, liberally educated, and endowed with those qualities which are naturally attractive to young and ardent minds.

This good man duly appreciated the constitution and susceptibilities of Butler's mind, and inscribed upon it traces of light and beauty which were never effaced. He sowed in it those seeds of religious truth which bore abundant fruit in after years. From this clergyman Benjamin received his first knowledge of books, and his first impressions concerning the pleasures and business of life; by him he was taught to explore the records of past ages, in order to observe the footsteps, not only of conquerors, statesmen, and orators, but of the benefactors of the human race, "martyrs to the interests of freedom and religion, men who have broken the chain of the captive, who have traversed the earth to bring consolation to the cell of the prisoner, and whose lofty faculties have explored and revealed useful and ennobling truths."

At fourteen, Benjamin was sent to the Hudson Academy. His mental endowments, close application and pleasing manners gained him many friends, and he was regarded as a promising scholar.

A few years previous to this, a young lawyer who had practiced some time in a small village in Columbia county, received the appointment of surrogate of that county, and removed to Hudson. He had the reputation of being a young man of much promise, and had already gained a respectable position at a

bar where William W. Van Ness, Elisha Williams, Thomas P. Grosvenor, and Jacob Rutsen Van Rensselaer were the ruling spirits. These gentlemen were Federalists, distinguished at home and abroad, not only for their legal ability, but also for their political influence. But the young lawyer was an active Democrat; and as this was a period when political dissensions were peculiarly bitter, he was compelled to contend in the political, as well as legal arena, against these powerful men. For him, the struggle was trying, and the labor intense, for he had no powerful friends and no wealth to aid in the unequal contest. But he belonged to the people, his sympathies were with them, and they in turn regarded him with favor. With this advantage, and by the most unwearied exercise of his abilities he held his ground, gaining each day in strength, popularity, and in the confidence of the community.

At the period when Butler became a student at Hudson, this lawyer had just been elected to the State Senate against a distinguished Federal politician, and in spite of a strong opposition. It was, therefore, to him, a day of triumph and rejoicing. Among those who aided him in achieving this success was the elder Butler, who had long been his intimate friend.

The senator elect extended the friendship and esteem which he felt for the father, to the son, and often invited the latter to his office and house, encouraged him in his studies, and saw with pleasure his rapid progress. When finally his academic course ended, the lawyer took him into his office as a student at law. The intimacy thus begun never ended in life.

Step by step the advocate ascended to the summit of fame, and indelibly wrote his name on the page of his country's history; that name is Martin Van Buren. The student followed closely in his footsteps; and though he did not ascend as high as his perceptor, he has yet left a bright and imperishable name, and a

personal history instructive to the student, the lawyer, and the statesman.

In the spring of 1816, Van Buren moved to Albany, where he entered upon his extraordinary professional career. His devotion to the Democratic party, his incessant efforts in its behalf, subjected him to the fierce attacks of the proud and powerful Federal leaders, who early foresaw that he must be disposed of ere he became a lion in the pathway. No effort was spared which tended to his political and even social degradation. His humble origin was often referred to in language of contempt, his want of early education was enlarged upon, his character traduced, and his talents depreciated. Being slight in form and moderate in stature, his person was also sneered at; but those who watched his career attentively were reminded of Boswell's description of Wilberforce, when addressing the electors of York from the hustings. After his triumphant return in 1784, "I saw," says Boswell, "what seemed a mere shrimp mount upon the table; but as I listened, he grew and grew, until the shrimp became a whale." So with Van Buren; the Federal leaders adhering to the custom in politics, denounced him as feeble in intellect,—as a shrimp mentally and physically; but at the bar, in the popular assembly, his eloquence and thought caught the attention of court, jurors, and electors, and he rapidly passed beyond the reach of his assailants, who beheld him occupy one distinguished position after another until he reached the highest in the nation.

That the Federal leaders detected faults in the political character of Mr. Van Buren, cannot be denied; for with his consummate skill and ability—with his strength of character as a statesman, he possessed those unscrupulous arts without which political power is rarely attained. One of the secrets of his success was the skill and discernment with which he selected his friends. In this, he imitated the

subtle power of Cardinal Richelieu, Buckingham, and Halifax.

When Van Buren removed to Albany, Mr. Butler accompanied him. He soon attracted the attention of several distinguished gentlemen, who regarded him "as a student of great brilliancy and promise." This reputation was justly due to him, for he studied with untiring industry; his mind took a deep hold upon the subject he sought to investigate, and the tenacity of his memory was most extraordinary. Whatever he learned was not easily obliterated from his mind. He cultivated with great assiduity the power of reflection—one of the best qualifications that a student can possess; yet as it is susceptible of cultivation, it is within the power of all.

While a student, Mr. Butler became a member of the Presbyterian Church then under the charge of the late Doctor Chester, and, soon after, the superintendent of its Sunday school. In this capacity he gained the affection and confidence of teachers and scholars, by means of his winning character and that unflinching devotion to duty which was his ruling trait. His addresses were short, but well considered and impressive. The devotional exercises were conducted with great simplicity of manner, but with genuine earnestness, and hence, lasting effect.

In October, 1827, he was called to the bar. In 1818, he was married to Miss Allen, a young lady of many accomplishments. She was a sister of the gallant Lieutenant William H. Allen, who distinguished himself in the engagement between the frigate United States, and the British ship of war Macedonian, in 1812, and who was afterwards killed by pirates in the Gulf of Mexico.

Immediately after he was called to the bar, he became the partner of Mr. Van Buren, a relation which continued until 1817, when the latter was appointed a senator in Congress, and partially withdrew from the profession. Such, however, was Mr. Van Buren's



brilliant reputation as a lawyer, that he was often compelled to assume the management of important cases brought to him by old clients. Among those which he consented to conduct, after his appointment to the Senate, was *Wilkes v. Lion*, and *Varick v. Johnson*, in the Court for the Correction of Errors. The labor bestowed upon their preparation was immense ; but he was ably assisted by Mr. Butler, who manifested those powers of application and research for which he was afterwards so distinguished. Aaron Burr was Mr. Van Buren's colleague.

These cases, or rather this case, for they were in fact but one case, is the well-known *Medcef Eden* case, with which the courts of the State were engaged so long that "it became as familiar as the cause of *Jarndice v. Jarndice*." It was commenced by Colonel Burr, after his return from Europe, when reduced to poverty and want, and was the great object of his life for several years. "His management of this case," says Mr. Parton, "was remarkable and characteristic. *Medcef Eden* was a New York brewer, who made a great fortune, and dying in 1798, left his two sons a large amount of real estate upon the island of Manhattan. The two sons were to share the property equally, and if either died childless the survivor was to inherit the deceased's share. These young men, partly through their own extravagance, but chiefly through the dishonest sharpness of creditors, ran through their property in two or three years and were reduced to poverty. Their case was submitted afterwards to the two leaders of the New York bar, Alexander Hamilton and Aaron Burr, and the question was proposed, whether the estate could be recovered. Hamilton said it could not ; Burr was of the opinion that it could. Hamilton's opinion was adopted ; no proceedings were attempted ; the matter was forgotten ; and the Edens lived on in poverty. After Burr's return from Europe, he was reminded of it by hearing of the death of one of the brothers.



Meanwhile the estate had enormously increased in value. Inquiring for the surviving brother, he found him in Westchester county, immersed in debt, and residing within a debtor's 'limits'. The result was, that Burr, moneyless and in debt as he was, undertook to recover the estate; Eden agreeing to follow his advice in all things, to be in fact the passive instrument in his hands. Burr brought Eden, his wife, and two daughters to the city, established them in his own house, sent the daughters to school, and labored with the same assiduity for their mental improvement as he had done in former times for his own daughter, Theodosia's.

“He went craftily to work. The valuable parts of the estate lay in the city itself, held by banks and other wealthy corporations. He let these alone, for a while, and confined his first efforts to the recovery of a small farm in the upper part of the island, his object being to get the *principle* quietly established, upon which to found the more important suits. The owner of the farm was informed of this intention, and it was further intimated to him, that if he would not seriously contest and prolong the suit, he should be allowed to buy back his farm on his own terms. Mr. Burr won the suit. The case was appealed. He was again successful. Then he came down upon the owners of the city lots with a pelting storm of writs of ejectment, to their surprise and alarm. Mr. Burr won suit after suit, and recovered in time a very large amount of property.”

These cases involved the most intricate questions known in the law, and by the time they came to the knowledge of Mr. Butler, the points and questions to be examined were innumerable. While he was engaged on them, Colonel Burr often visited Albany, making valuable suggestions to him. A week before the argument of the first case took place, he was almost constantly by the side of Mr. Butler in the office. Mr. Van Buren was present enough of the time to un-

derstand the case sufficiently to conduct the argument. At the earnest solicitation of Mr. Burr, Mr. Butler was present at the argument of both cases, and opened the last one, much to the satisfaction of his distinguished associates.

The last causes which Mr. Van Buren ever tried before a jury, were the Astor case and that of the Sailor's Snug Harbor. They were tried in New York city, in the autumn of 1827; and in both he was assisted by Mr. Butler.

For two or three years after his admission to the bar, Mr. Butler confined himself to the Circuit Courts, attaining a respectable reputation as a jury lawyer.

In 1820, he argued the case of *The People v. Foot*. His opponent was the late Thomas J. Oakley, who was then ranked among the great lawyers of the State. Soon after this, he argued the celebrated case of *The President and Directors of the Bank of Auburn v. Blanchard and others*. He was opposed by Daniel Cady. One of his first cases in the Court for the Correction of Errors, was that of *Manahan v. Gibson*, a case of great importance. The opposing counsel was that giant at the bar, J. V. Henry.

In the argument of the celebrated case of *Troup v. Smith*, and also in that of *Morton v. Cragan*, he was associated with Samuel A. Talcott. Between Mr. Butler and Mr. Talcott there existed a warm personal friendship. The mighty intellect of the former was linked to many high-toned and generous sentiments. He who in his speeches made those magical transitions from the subtlest argument to the deepest pathos, saw in a mind like Butler's something highly attractive to him, and they were frequently associated in important cases. As we have seen in the life of Daniel Lord, on his first appearance in the Court of Errors, they were opposed to him.

Mr. Butler soon appeared so often in the Supreme Court and Court of Errors, that a history of his cases would amount to volumes. He took his place with

the ablest and most distinguished lawyers then at the bar—many of them the great lawyers of the nation.

In 1821, he was appointed district-attorney of Albany county. He had then been at the bar as an attorney four years, and one year as a counselor—which sufficiently explains his standing as a lawyer. He held that office until January, 1825. Though the labors it entailed were heavy, and the responsibilities great, yet his success was in proportion to his labor, and he retired with the well-earned commendations of the public.

Before his official term expired, a law was passed by the Legislature of 1824, appointing Chancellor Kent, Erastus Root, and Benjamin F. Butler, commissioners to revise the laws of the State; but as these gentlemen did not enter upon the duties thus assigned them, the Legislature of 1825 passed another act, by which Mr. Butler, John Duer, and Henry Wheaton, were made commissioners to revise the statute laws. Soon after this appointment, Mr. Wheaton became *charge d'affaires* to the Court of Berlin, and Mr. Spencer was appointed in his place. The participation of the latter in the revision has been referred to in another part of this work.

As has been well said by a distinguished member of the bar, “the selection of Mr. Butler, who had then so recently commenced his practice, carried with it evidence of the high estimation in which he was held by the Legislature. It was an undertaking of great hazard to his professional reputation, as well as of great labor. It necessarily involved for a time the almost entire sacrifice of his business, as he was obliged to devote himself almost exclusively to that duty. He undertook it; and, notwithstanding the prejudices which it at first encountered, it was carried through to a successful termination.” And, in the language of Judge Kent, “All who knew the indomitable energy of John C. Spencer, will readily believe that his spirit pervaded the whole work, but judging

from internal evidence, I cannot avoid believing that much of the essential excellence of the Revised Statutes, and more of the labor which adapted them to our general system of jurisprudence, the plan and order of the work, the learning of the notes, the marginal references, and the admirable index which accompanies it, should be ascribed to the labor, the patient touches of unwearied art, bestowed by Mr. Butler."

Those statutes, however, reveal the learning, skill, labor, and masterly ability of each of their great authors. If we trace upon them "the patient touches of unwearied art bestowed by Mr. Butler," if we find upon them evidence of the energy of thought, "knowledge of the law, and power of analysis," which characterized Mr. Spencer, we also find the indubitable evidence of the scholastic, mature, and lucid intellect of the gifted Duer, whose mind was replete with legal learning, rendered practical by long experience at the bar, and daily observation of our system of jurisprudence.

The revisers applied themselves without interruption to the discharge of their duties, until the completion of their work. The professional engagements of Mr. Duer, however, prevented him from fully participating with his co-commissioners in preparing the third and fourth parts of the statutes, as presented to the Legislature, although he occasionally met and advised his colleagues.

When the work was completed, the revisers, instead of arrogating to themselves all the honor which was naturally due to all who shared in it, publicly acknowledged the obligations they were under to various persons who aided them. "It is due to truth and justice," they said, "to remark that in the course of enactment, many alterations were made. Some of them were proposed by the joint committee from the Senate and Assembly to whom the several chapters were referred, and others were suggested by indi-



vidual members of the Legislature, who brought to the task the various and practical knowledge so essential to the perfection of the work ; and who with unwearied diligence devoted their time and labor to its completion.”

In 1813, John Woodworth and William W. Van Ness, two of the most distinguished lawyers at the bar of the State, who subsequently became justices of the Supreme Court, had prepared two volumes called “Revised Laws of the State.” The ability and research which the authors manifested in their preparation, rendered the Revised Laws of great advantage to the revisers of 1825.

“The public statutes in force at the time of the revision, constituted the base of the Revised Statutes ; while in numerous instances, the rules of the common law were reduced to a written text, and inserted in their proper place in connection with the statutory provisions on the subjects to which they relate ; and in other instances, those rules were enlarged, modified, and varied, more fully to conform to the nature of our government and the habits and exigencies of the people.”

Like the laws of the twelve tables, which were engraven on brass by the jurisconsults, and set up in a public place, in order that every one might know his rights and their extent ; so the Revised Statutes dictate to every citizen his rights under the laws.

At length a new edition of the statutes was demanded by the people from all parts of the State, and the revisers were once more called to the work. They acceded to the request. The whole existing statute law of a general nature, all the acts of the Legislature, passed since 1828, were carefully examined, and the statutes themselves critically reviewed and rearranged with annotations and references to the decisions based upon the Revised Statutes, made by the Supreme Court, the Court of Chancery, and the Court for the Correction of Errors.



“In preparing this edition, the statutes collated, and the copy of the text as published, were furnished by John C. Spencer; while the labors of Mr. Butler and Mr. Duer were confined to the examination of the text so prepared, and the preparation of the extracts from the reports of the revisers, with the accompanying notes, and other matters which are inserted in the third volume.”

This new edition was reported to the Legislature at its annual session in the winter of 1836, and by appropriate acts was passed as the statutes of the State. Other editions have succeeded it, embracing the acts since passed; and they are voluminous, but indispensable works in the library of the practicing lawyer.

“The principle of the revision was wise and conservative. Acknowledged evils were removed; doubts were cleared away; the doctrines of important decisions were extended; anomalies were suppressed or reconciled; but all the essence of the old laws was preserved, and even the habits of lawyers were wisely respected.”

The statutes, when completed by these revisers compared favorably with any code of laws which had ever before appeared. They resemble in the manner of their preparation and the material of which they were composed, the works of Justinian, who in 528 appointed ten lawyers, with directions to make a selection from all the constitutions of his predecessors, including those contained in preceding codes, and modify them so that they would conform to the usages of the times, and to arrange the whole under appropriate titles. This work was known as the *Codex Vetus*. It consisted of twelve volumes, and occupied the commissioners fourteen months. When it was completed, Justinian appointed a new commission, consisting of seventeen jurists, chief of whom was Tribonian, who had belonged to the former commission. The new commissioners were directed to sub-

ject the writings of the old jurists to the same process as the previous commission had the constitutions, and the old codes ; that is, they were to read and correct (*elimare*) all the works of the ancient jurisconsults which were considered as authoritative, and to compose therefrom a body of jurisprudence which should contain nothing superfluous or contradictory, and which should take the place of those old works, excluding from the collection all that had not been authorized by the imperial authority, or sanctioned by usage. This work was contained in fifty volumes, and called the *Digests* or *Pandects*. It occupied the time of the commissioners three years, and when completed, Justinian prohibited any one from incumbering the work with the verbose interpretations with which the civil law had been inundated. Perhaps the caution of that sagacious emperor would not be out of place in the present age.

It is said that Mr. Butler, with great patience and persevering industry, investigated the plan upon which the Roman commissioners proceeded with their work, and applied the same process to the codes of modern Europe. It is no exaggeration to say that the works of the New York revisers are destined to exist as long as laws are respected and obeyed. The Revised Statutes have been adopted as models by many of our sister States ; “while many of their provisions have been incorporated in the legislation of Great Britain, as will be apparent to any one who examines the British statutes.”

“Mr. Butler’s exertions in regard to this great work were not confined to his proper task as a reviser ; for he was elected a member of the Legislature of 1828, and during the extra session, which convened September 9th of that year, for the special purpose of considering the proposed revision, he was indefatigable and prominent in regard to the subject. The only consideration which induced him to accept a seat in

the Assembly, was his desire to aid that body in its deliberations on the work which he and his colleagues had submitted to it, and his services were therefore invaluable. John C. Spencer was then a member of the Senate, and held the same relation to that body which Mr. Butler did to the Assembly.

“One of the most distinguished members of the Senate at this time, was Ambrose L. Jordan, of Hudson, N. Y. He occupied even at that early period an enviable position at the bar of the State: his great learning and legal abilities are evinced by a long and brilliant professional career. He was peculiarly qualified for the work which was then before the Legislature, and entered upon it with great alacrity, devoting to it all his abilities and energies. The deliberations of the Senate upon the statutes were materially aided by him. Both Mr. Spencer and Mr. Butler publicly acknowledged the value of his services. This extra session closed on the 10th of December, 1828, all its proceedings having been harmonious, and all the provisions of the Revised Statutes having been adopted subject to such amendments as were incorporated in the act or acts by which they became the legal statutes of the State.”

Early in the month of February, 1829, William L. Marcy, one of the regents of the university, resigned, and Mr. Butler was soon after appointed in his place. It has been said that this is the only office he held that did not impose upon him responsible and toilsome duties.

In 1833, Mr. Marcy again gave him an opportunity for advancement. The former was then United States senator; but having been elected governor of the State, he resigned his seat in the Senate. The friends of Mr. Butler desired him to become Mr. Marcy's successor; but although his party was then dominant in the State, and there was no doubt of his unanimous nomination, he declined the distinguished honor, adhering rigidly to a determination which he

early adopted, "never to accept any office which would withdraw him from his professional studies and pursuits." Soon after this, he was appointed to another position, more congenial to his tastes and his profession.

During a period of fifty years, a dispute had existed as to the boundary line between New York and New Jersey. So serious was this difficulty, that it frequently led to bloody collisions between the citizens residing near the disputed line. At length a commissioner was appointed by each State, with full power to adjust it. Mr. Butler was appointed such commissioner for the State of New York, and Theodore Frelinghuysen, for the State of New Jersey. The acknowledged ability, the large experience, and extensive learning of these commissioners, the similarity of their minds, and more than all, their great caution and conscientiousness, rendered their appointment exceedingly fortunate for both States. They gave the matter a patient, thorough, and impartial investigation, and then, in the spirit of an enlightened and liberal compromise, brought the difficulty to an adjustment which was satisfactory to all parties and to every conflicting interest.

In the autumn of 1833, before the labors of the New Jersey commission were terminated, Mr. Butler was appointed attorney-general of the United States, in place of the late Roger B. Taney, who was made chief justice of the United States.

This appointment was exceedingly gratifying to all parties, a fact which was manifested by the following circumstance. A few days before Mr. Butler's departure for Washington to enter upon the duties of his office, the citizens of Albany, without distinction of party, assembled and expressed their regard for his virtues as a citizen, and their admiration for his talents as a lawyer. Among those who addressed the meeting, were Stephen Van Rensselaer, Abraham Van Vechten, and Harmanus Bleecker. This circum-



stance alone, speaks volumes for the private and professional character of Mr Butler.

In October, 1836, while still discharging his duties as attorney-general, he was appointed secretary of war in the Cabinet of President Jackson, and held the two offices until the 4th of March, 1837. This last appointment was accepted by him with great reluctance, and only at the earnest solicitation of the president. In the department of war, there was at this time a large accumulation of business, owing to the Seminole war; "but Mr. Butler, by his assiduity, care, and systematic method, brought up the arrears of business, and left the department in a satisfactory state to his successor."

The legal opinions rendered by him while attorney-general, are written with much force and perspicuity, evincing an extended and intimate acquaintance with all the duties of the office. They abound in learning and research. The questions submitted to him were examined with a depth of thought and calm reflection, and with a large perception of relations which left no obscurity or vagueness. Indeed, his opinions were regarded as dignified state papers bearing the impress of an accomplished and enlightened mind, losing nothing when compared with those of his great and learned predecessors.

On the 10th of April, 1835, he gave his opinion on the acts of the postmaster-general, and how far they are conclusive. Perhaps none of his opinions attracted more attention or gave more general satisfaction than this. From the organization of the government down to that time, many of the duties and powers of the postmaster-general had remained undefined or uncertain. Mr. Butler thoroughly examined the duties, responsibilities, and powers of that officer, and his conclusions were entirely satisfactory to the large number of persons interested in the opinion. His learned and able successor, Mr. Grundy, of Tennessee, in referring to this opinion, says:



“My distinguished predecessor, Mr. Butler, of New York, has examined this question so thoroughly—has brought to the consideration of it so much legal learning, and has arrived at such equitable and reasonable conclusions, that I do not regard it necessary for me to spend a moment’s time in considering it, for I am confident that I could arrive at no conclusions which would differ from his.”

In March, 1838, he gave his opinion upon the duties of the attorney-general, in which, among other things, he decided that this officer has no authority to settle questions of fact, nor to give any decision or advice on questions of law, except for the assistance of the officer calling for his opinion on points stated; that he is obliged to take the facts of a case to be as they are stated to him, and to predicate thereon. His opinion, delivered May 20th, 1837, on the question of damages for the unlawful detention of vessels, exhibits a laborious and discriminating examination of a very large number of adjudicated cases, both in the State and Federal courts, each one of which is considered and compared with judicial wisdom and discernment.

His various opinions on pre-emption; on the question of extending relief to the sufferers by the great fire in New York; and others, are all characterized by thorough, systematic and learned examinations, and equitable conclusions.

On the 4th of March, 1837, President Van Buren entered upon the duties of his administration, and Mr. Butler resigned the office of secretary of war, but retained the position of attorney-general until January, 1838, when he resigned that office also. Soon after this, he removed to New York city, and resumed there the practice of his profession. He continued a resident of that city the remainder of his life. Within a few months after his removal to it, the office of district-attorney for the United States became vacant, and Mr. Butler was appointed to it. He discharged

its duties until the inauguration of General Harrison, when he resigned, and once more resumed the practice of his profession.

In 1844, Mr. Butler and Daniel S. Dickinson were the electors at large in the electoral college of the State, and cast their votes for James K. Polk. He tendered Mr. Butler the office of secretary of war, but the offer was respectfully declined, for reasons which were entirely satisfactory to the president. After his inauguration, he conferred upon Mr. Butler the office of United States district-attorney. This position Mr. Butler did not hesitate to accept, as it did not interfere with the duties of his profession. He continued to occupy it until the election of General Taylor, when he was removed.

Early in 1848, Mr. Butler, John C. Spencer and Alvah Worden were appointed commissioners to codify the laws of the State. It was the desire of the profession throughout the State, that these gentlemen should accept the trust thus committed to them, but both Mr. Butler and Mr. Spencer declined to act.

“In 1843, the former sustained a great calamity—the great irreparable calamity of his life. He was fond of domestic life. The felicity of his home was very great; but the time had come when it was to be invaded by the unrelenting enemy of man; the endeared companion of his life—who had cheered his toils and lightened his cares—who was the light and joy of his happy home,—was removed by death. It was a bereavement in which he had the deep sympathy of his friends; but it brought out the force of Christian principle by which he was ever actuated and guided, and he bore his affliction with serene resignation—although not without deep and abiding sadness.”

In the summer of 1856 he made a visit to England, but returned very soon to complete a professional engagement of great importance. This was his con-

nection with the great case of *Levit v. Curtis*, which had been before the courts a long time, and was then pending in the Court of Appeals. He was compelled to terminate his tour in Europe in order to conduct the argument of the case at a term of the court which was approaching. The case is reported in 15 *N. Y.* Some idea of its magnitude and importance may be inferred from the fact, that the statement and points in it made a book of over three hundred and six pages. The late Judge William Kent, who was associated with him in the case, in an address delivered after the death of Mr. Butler, said :

“ I was engaged with him and two other lawyers in the conduct of a case, which for voluminous and complicated pleadings and proofs, was, perhaps, unparalleled in our courts. It was deemed necessary that a condensed statement of the evidence of the whole case, and legal points, with minute references to the proofs and authorities affecting every point, should be prepared for the Court of Appeals. Two of the associate lawyers were prevented by other engagements from undertaking the work ; I shrunk from it as utterly beyond my powers, and it fell to the self-sacrificing industry of Mr. Butler. Our conferences in relation to it were of daily occurrence ; and I observed, with alarm, its gradual effect on his health. Often I have left him bending over his desk, late of a July night, and found him the next morning in the same posture ; which had been varied in the interval by only a brief period of intermission, in which he has told me that sleep was often sought in vain. I remonstrated often, seriously, almost angrily. I remember he once answered me by repeating Wordsworth’s ‘ Ode to Duty.’

“ It was impossible to withdraw him from his work ; and thus health was wasted at the midnight taper—life itself consumed in the severe labors of his office—and when his task was finished to the admiration of his associates and his opponents, the anxious

eye of friendship saw too surely that the stamina of his constitution was gone. It enhanced our idea of his energy, to know that this too protracted labor was in part performed while mourning a bereavement the most affecting that could occur to a man of his domestic affections; and our admiration is increased when we think that he carried on his work, enduring in silence and composure, a heartfelt wound, which had touched a nerve where agony resided."

Mr. Butler's professional life extended through the long period of forty-one years—a period the most interesting and important in the legal history of the State. During this time, he practiced under the provisions of three different State constitutions, and under many innovations in our judicial system. He was the compeer of many of the great lights of our early jurisprudence, he saw many of them pass away, and when he was summoned from earth there were but few of them left.

"The student in pursuing his studies is surprised to find in all his books, such various memoranda of the professional labors of Mr. Butler. He finds his arguments in all the old, ingenious, and artificial rules of special pleading, both at law and in equity. He finds evidence of his professional learning and subtle distinctions of the English law of real property, and in all the doctrines which govern the creation and devolution of estates, the interpretation of devises and the construction of settlements and deeds, tracing with the erudition and intellectual subtlety of Fearne, Sugden and Preston, the rules which control real property, through numberless and bewildering cases, to their deep sources in the obscure recesses of the mediæval law. The books are filled with his arguments on the ordinary law questions which occupy our courts, exhibiting the extent of his studies in constitutional and commercial law.

"It is a pleasure for me to allude to his treatment of the junior members of the bar. His briefs, his



memoranda, all the treasures of his learning and fruits of his investigation were offered to his associates. He encouraged the young lawyer in his timid efforts, and unrestrainedly presented all he knew to the compeer counsel who was associated with him. He was indifferent to his position in the argument, aiding the lawyer who preceded him with suggestions or with citations of authorities; with briefs, which, perhaps, had cost him hours of studious labor, in entire abnegation of his own interests, and, indeed, unconscious of vanity or selfishness."

Mr. Butler's sense of justice and morality governed and guided him in all the duties of his profession. No reward, however great, could induce him to undertake a case which he believed corrupt or dishonest.

He was once applied to by a lady of great wealth to aid her in procuring a divorce from her husband. The application was in writing, and contained a carefully drawn statement of the facts on which she relied for success. It was accompanied by an exceedingly liberal fee. The statement convinced Mr. Butler that the lady's case had little merit in it, and that she expected to succeed by certain adroitly laid plans. Within a few days after the receipt of this proposal he returned it, inclosing in it the fee, and also a beautiful letter in which he declined to engage in the case and advised her to abandon her design.

"Even in the event of success," said he, "there will be a time in your life, when the gayety, fashion, and, pardon me, the follies and sin by which you are surrounded, will pass away with your youth, and in the eventide of your life, as you meditate upon the past, the voice of conscience will come to you, overwhelming you with sorrow and regret. I pray you, therefore, do not now in the summer of your life sow those seeds which in its autumn will produce a profusion of miseries. . . . As has been said by one wiser than myself, it must be



carefully remembered that the general happiness of the married life is secured by its indissolubility. When persons understand that they *must* live together, except for a very few reasons known to the law, they learn to suffer, by mutual accommodation, that yoke which they know they cannot shake off; they become good wives and good husbands — for necessity is a powerful master in teaching the duties which it imposes. I therefore decline to undertake your case, and trust that my words will dissuade you from making any further effort in a case which I am sure you will upon mature reflection abandon.”

This letter had its effect; it brought the lady to reflect seriously upon the step she proposed to take, and in after years she blessed the day that she submitted her case to a man like Mr. Butler.

In the year 1835, the council of the University of the City of New York, having decided to establish a faculty of law in that institution, Mr. Butler was requested to prepare a plan for its organization. He complied with the request, and on the 29th day of May, 1835, submitted to Rev. J. M. Mathews, then the chancellor of the University, a document entitled “A Plan for the Organization of a Law Faculty, and for a System of Instruction in the Legal Science in the University of the City of New York.”

Very soon after this, the council met, and adopted the following resolution:

“*Resolved*, That this council do fully approve of the plan now submitted by the Honorable Benjamin F. Butler, for the organization of the law faculty, and that the same be and hereby is adopted by this council; subject to such modifications as may hereafter be deemed advisable.”

This resolution was accompanied by the following statement of Chancellor Mathews.

“From their first incorporation, the council had very generally cherished a strong desire to place the law department of the University under the charge of

Mr. Butler. They were led to this selection both from their own conviction of this gentleman's eminent qualifications for the duties and responsibilities of the station, and from the knowledge that his appointment would meet the cordial approbation, not only of the bench and the bar in this State, but also of distinguished lawyers throughout the nation.

“This desire was naturally increased by the adoption of the plan proposed by him; and although it was well understood that his engagement as attorney-general of the United States would not permit him immediately to enter upon the duties of the professorship, it was thought that the advantage to be derived from his services, if they could be secured within a reasonable time, would justify some delay in their commencement. Under these impressions, he was therefore unanimously elected principal professor; and, as will be seen by the following communication, has accepted the appointment, and will enter upon his duties in March, 1837.”

The ability and learning with which this plan was prepared, is fully attested by the foregoing resolution and statement.

Mr. Butler's plan recommended, among other things, a course of three years' study before graduating; a certain proportion of that time, if spent in a law office, to be deducted from the course. It also recommended departments, as primary and secondary. Among the studies proposed for the third year, were forensic duties and professional ethics.

The following comments of Mr. Butler upon the last branch of study, are of the highest importance to the student, the lawyer, and the private citizen. They are entirely characteristic of him in his professional as well as in his private character.

“Under this head, the advantages of diligence and integrity may also be enforced; and the true method of acquiring public esteem, and of rising to eminence in the profession, may be pointed out and

recommended. On this subject, early and sound instruction is of the first importance. It is true that our courts, by their rules and decisions, carefully inculcate on gentlemen of the bar the high obligation of fidelity and justice, and, when occasion requires, they enforce these precepts by appropriate penal sanctions. But there are cases of chicanery and illiberality in practice, and sometimes of professional delinquency of a more serious character, which cannot be brought to the notice of courts, and therefore, pass without judicial censure.

“One of the most effectual methods of promoting so desirable an end, is to combine moral training with professional education, and to imbue the mind of the student with correct notions of the nature and purposes of his calling, and of the responsibilities which belong to it. He should be taught that though many of its duties grow out of the misfortunes, the errors, and the vices of mankind, the great object of his profession is not, as is supposed by many without, and some within its pale, to derive wealth or livelihood from those evils, but to mitigate and correct them. He should also be informed that the display of rare ingenuity or of great intellectual power, in forensic discussions, is by no means the most useful of professional labors. On the contrary, he should be instructed that it is an important and very honorable part of the business of a lawyer, by his learning, skill, and sound advice, to aid his fellow-citizens in the correct transaction of their affairs, in the solution of difficult questions without resort to litigation, and in the amicable settlement of angry controversies. Above all, he should be impressed with the conviction that in conducting such legal proceedings either in or out of court, as may be necessary to the interest of his clients, he is called to the high dignity of ministering in the sanctuary of justice, and that it behooves him to come to the altar ‘with clean hands’, and ‘a pure heart,’—that frankness and integrity towards his an-

tagonists are perfectly compatible with the manly support of the rights of his employers—that chicanery and artifice are not only in the long run injurious to professional success, but utterly inconsistent with the first principles of a science whose grand basis is to ‘command what is right, and to prohibit what is wrong’—and that to form the character of a great jurist, it is necessary, first of all, TO BE A GOOD MAN.”

In the year 1834, John C. Spencer was invited to prepare a plan for the organization of a law school on the Maynard endowment, at Hamilton College, by the trustees of that institution. He accepted the invitation and submitted a plan worthy his rare talents and unrivaled industry. He was afterwards invited to execute in the law professorship of Hamilton College, the plan so prepared by him; but he was compelled by his numerous engagements to decline. Thus it will be seen that both Mr. Butler, and Mr. Spencer, who were so intimately connected in remodeling the statute law of the State, were also engaged in preparing a course of instruction on the common law.

Some time previous to Mr. Butler’s commencing his labors of preparing his plan for the University of New York City, he received from the Baron De Roenne a full translation of Savigny’s celebrated essays on the state of the German universities, including copious extracts from lectures delivered in those universities on various branches of juridical science, among which were lectures on the Digests or Pandects, which included the whole system of the Roman law in its detail; also on the forms of judicial proceedings (process) founded upon the Roman and ecclesiastical law, and upon the statutes of the German empire. The value and importance of this work to Mr. Butler was very great, and its instruction materially aided him in other duties which he was called upon to discharge.

“His love of literature and his cultivation of it,



amid all the demands of his profession, were remarkable." By intense application and study, he made himself a thorough scholar. From the time of leaving the academy at Hudson, to the close of his life, he continued a student of the languages, so that he read his favorite authors of antiquity in the original with great facility.

He possessed a poetic fervor which underlaid his apparently prosaic and literal nature, and which was exhibited in conversation with his familiar friends in beautifully expressed thoughts, or pleasing quotations from his most admired poets. This was illustrated, in a happy manner, on the occasion when Judge Kent remonstrated with him against his habits of excessive professional labor. In his writings, particularly in his letters to his clerical friends, he exhibited great familiarity with the Bible, especially with its great poets, whose lofty conceptions were both the offspring of human genius and emanations from heaven. He believed that poetry had a higher end than mere amusement; that in the hands of genius, it tended to advance truth, philosophy, and religion—that it laid aside the severity of the preceptor, and displayed as in a picture, "the practice, the actions, the manners, the pursuits, and the passions of men; that by the force of imitation and fancy, by the harmony of numbers, by the taste and variety of imagery, it captivates the affections of the readers; and imperceptibly—perhaps reluctantly, impels him to the pursuit of virtue."

As a lawyer, Mr. Butler read with pleasure in the writings of the Hebrews, the regulations of their commonwealth, the structure of their codes, and their ratification; their manner of administering justice, and all their relations of civil and domestic life.

His consistent religious principles were the most attractive features of his character, for they were just to his own understanding—they spoke with a tone of reality—with a genuine sensibility—with an ingenious



and deep sincerity. They were sustained by the high cultivation and full development of his intellectual nature. Instead of thinking that religion was a system of dullness, and tame submission to sullen dogmas, that crush the light, generous, and pleasing emotions of the soul, he believed it opened new fields for the intellect—gave it a new consciousness of its own powers and of its divine original; that it raises the statesman and the lawyer to the discovery of the true interest of the State, causing them to seek without fear or favor the common good, teaching them to understand that “a nation’s mind is more valuable than its soil, and prompting them to originate and give stability to institutions by which society is carried forward, and to confide in justice and virtue as the only foundation of a wise policy and of public prosperity.”

It has already been said that Mr. Butler was fond of domestic life. This attachment undoubtedly caused him to refuse those eminent positions which were so frequently tendered to him, for his attachment to home was paramount with him. “It would be injustice to his memory and the memory of his affections, not to allude to that amiable and happy partner with whom he lived from early manhood to that very recent period when he was bereaved of the graces of a beautiful woman, whose strong sense, warm affection, and accomplishments, charmed his home, who encouraged and adorned his labors and lessened the fatigues of a studious and rightly ambitious life. His house was the seat of elegant hospitality; a place in which to find men of the highest distinction in the State, and his door was never shut to persons of the most modest pretensions, whose merits were merits of the heart.”

Mr. Butler continued to devote his entire energies to the duties of his profession, until the autumn of 1868, when his friends prevailed upon him to visit Europe again. Accordingly, on the 16th day of Oc-

tober, 1868, he embarked at New York in the steamship *Arago*, bound for Havre, intending to remain abroad two years. On the 29th of October, he landed at Havre. He then visited Harfleur and Rouen, and on the third of November, arrived at Paris. The next day he wrote a long and interesting letter to his son, William Allen Butler, Esq. "In the evening of that day he was taken ill, and notwithstanding all that kindness, attention, and medical skill could do, the disease progressed rapidly. He retained his consciousness, however, until noon of Monday, November 8th. In the evening of that day, his earthly career terminated."

Judge Kent thus describes his last interview with Mr. Butler:

"A few days before he sailed, I met him in Nassau-street, and heard with unmingled pleasure the anticipations he had formed of his tour. He spoke of Italy and Rome, of the Tiber and the Anio, the haunts of his favorite Horace; of the Tusculan retreat of Cicero, and sportively promised to write me a letter from the ruins of the Forum. I spoke to him of England, which he hoped to revisit,—and anticipated the pleasure of his wanderings in the homes of the great jurists whose works had been his life-long study, and who, like him, had mused on the common law, and brought philosophy and learning to aid in its progress and improvement; of HARGRAVE, and CHARLES BUTLER, MANSFIELD, and ROMILY. Why think of death, was my reflection, to one so full of joyous hope and expectation! I left him in a pleasant delusion as to his health and future life—to be suddenly startled by the intelligence that his earthly career was ended, and that his gentle and generous spirit, worn by toil, had sunk on the highway of life."

It has been said with much truth that the legal profession has produced two men whose characters and acquirements were similar to Mr. Butler's, and that these were Sir Samuel Romily, and William Wirt;

that "no two men have been in the profession whose merits were more extensive, or whose memories were more deeply cherished; that in the character of the latter, the proportion of his virtues was that of harmony in all their relations." And yet he had enemies who saw, or pretended they saw, many moral blemishes on his character: Such is the corruption of party, that no character, however pure, is free from censorious attacks. That he shared in whatever there was erroneous in the principles of the party with which he was connected, is certain,—that he did not pass through the vicissitudes which attended his own political fortunes and those of his friends, unscathed by their political faults, is equally certain; but that his moral character was tainted cannot be proven.

His connection with the Washington and Warren Bank, in the earlier years of his life, has been the subject of bitter reproach, in which even his religious principles were attacked. And yet, when it is remembered that this attack fell upon him in the course of a heated political contest, intensified by the recriminations of a disappointed adventurer, it must be regarded only as partizan and private malice.

A dispassionate estimate of the character, talents, and services of an eminent man, may, however, disarm partizan feelings which are often proof against all the eloquence of enthusiastic admiration. "The great poet of human nature has taught us that it is in the power of the honest chronicler alone to preserve the honor of the illustrious dead from corruption, and to extort from the most prejudiced enemy the confession that

"Whom I most hated living, thou hast made me  
With thy religious truths and honesty,  
Now in his ashes honor."




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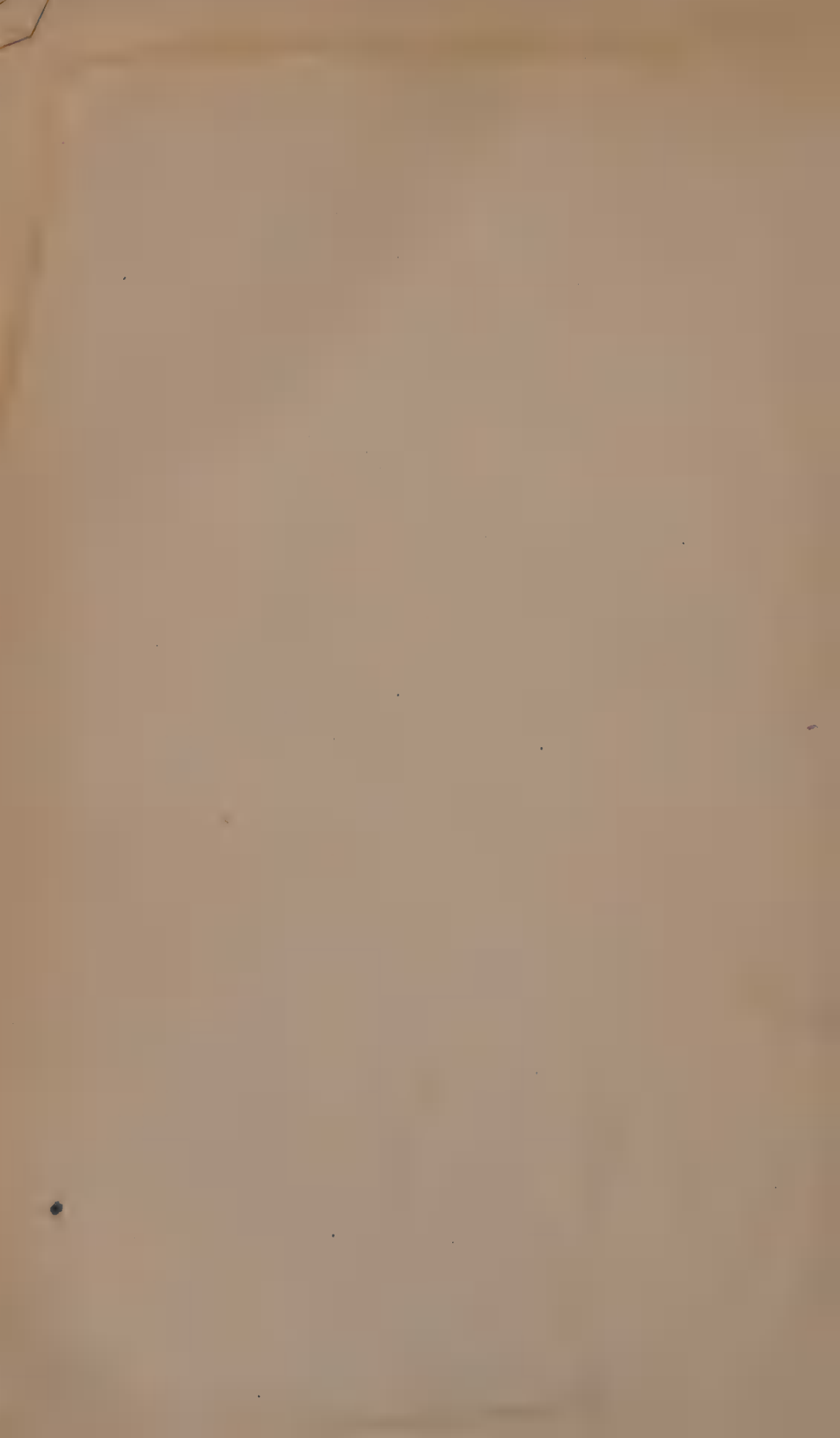
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